

# **BOARD OF BARBERING AND COSMETOLOGY**

## **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2003 SUNSET REVIEW REPORT**

---

*Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Previous Sunset Review, Background Paper for the 2002 Public Hearing, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs*

---

### **Senator Liz Figueroa**

Chair

#### **Senate Members**

Sam Aanestad  
Edward Vincent

#### **Assembly Members**

Lou Correa, Vice Chair  
Joe Nation  
Sharon Runner

#### **Staff:**

Robin Hartley, Consultant  
Jennifer Anderson, Assistant

#### **Staff Assistance Provided By:**

Bill Gage, Consultant  
Senate Business and Professions Committee

Jay DeFuria, Consultant  
Senate Business and Professions Committee

Kristin Triepke, Consultant  
Senate Business and Professions Committee

## TABLE OF CONTENTS

<b>PART 1. BACKGROUND INFORMATION AND FOUR YEAR OVERVIEW OF THE CURRENT REGULATORY PROGRAM.....</b>	<b>1</b>
<b>PART 2. BOARD’S RESPONSE TO ISSUES AND RECOMMENDATIONS FROM PREVIOUS REVIEW .....</b>	<b>27</b>
<b>PART 3. BACKGROUND PAPER FOR THE 2003 HEARING .....</b>	<b>39</b>
<b>PART 4. FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS .....</b>	<b>51</b>

# 1.

## OVERVIEW OF THE CURRENT REGULATORY PROGRAM

### BACKGROUND AND DESCRIPTION OF THE BOARD

The Bureau of Barbering and Cosmetology (Bureau) licenses barbers, cosmetologists, electrologists, estheticians, and manicurists after determining through an examination that applicants possess the minimum skills and qualifications necessary to provide safe and effective services to the public. The Bureau conducts both routine and directed health and safety inspections of licensed establishments operating in the State of California. The Bureau also investigates allegations of unprofessional conduct, gross negligence, incompetence, fraud, or unlicensed activity. When warranted, the Bureau takes disciplinary action.

The Bureau's mission is to protect consumers from harm by licensees through its licensing and enforcement programs. Currently, the Bureau has an annual budget of approximately \$11 million with 74 permanent full-time staff and 51 permanent-intermittent and temporary employees (students and seasonal clerks) for a total of 125 positions. Examinations are administered on a daily basis at two examination facilities, one in Fairfield and the other in Los Angeles. The Bureau administers approximately 23,000 examinations a year. The Bureau regulates nearly 420,000 licensees, including 242,000 cosmetologists, 91,000 manicurists, 21,000 barbers, 19,000 estheticians, and 3,300 electrologists, and 37,000 establishments. There are 15 inspector positions, 12 enforcement positions, 27 licensing positions, 11 positions in administrative support and policy, 25 examination staff in the south and 22 in the north. There are currently 206 barbering and cosmetology schools approved by the Bureau and licensed by the Bureau of Post Secondary and Vocational Education (BPPVE).

The Barbering and Cosmetology Act (Business and Professions B&P § 7319) exempts military personnel performing services on base, those working in the entertainment industry, and individuals engaged in demonstrating beauty products. Any service provided outside of a licensed establishment without compensation is also exempt as are services provided in correctional institutions.

In fiscal year 2000/2001, the inspection unit issued more than 15,000 citations for health and safety violations and unlicensed activity. The fine amount assessed was nearly \$3.5 million and the Bureau collected over \$1 million. The Bureau received nearly 1,400 complaints from consumers. In addition, over 1,000 enforcement cases were generated as a result of Bureau inspections. The majority of the consumer complaints and violations found during inspections were for minor health and safety violations and unlicensed activity. During the same year, 119 complaints were serious enough to be referred to the Attorney General's (AG) Office for prosecution. Also in fiscal year 2000/01, the Bureau took disciplinary action in 123 cases, which include the revocation of 51 licenses.

## ⇒ **BACKGROUND**

The Board of Barbering and Cosmetology (Board) was created in 1992 after the passage of enabling legislation (AB 3008, Chapter 1672, Statutes of 1990) that merged the Board of Barber Examiners and the Board of Cosmetology, both of which were established in 1939. The merged Board consisted of five public members and four members representing the professions. The Governor appointed three of the public members and four professional members. The Senate Committee on Rules and the Speaker of the Assembly each appointed one public member.

In 1996, the Joint Legislative Sunset Review Committee (JLSRC) recommended that the Board be eliminated. Like all boards in the Department of Consumer Affairs (Department), the Board of Barbering and Cosmetology functioned semi-autonomously. Once the Board was sunset, all of its functions, duties and powers were transferred to the Director of the Department. The result was the creation of the Barbering and Cosmetology Program in 1997, which was led by a Program Administrator appointed by the Department Director. The Program experienced another change in 1999, when Senate Bill 1306 changed the Program's name to the Bureau of Barbering and Cosmetology (SB 1306, Senate Committee on Business and Professions, Chapter 656, Statutes of 1999) and required the Bureau be subject to sunset reviews.

Since the Board was sunset, both the Program and the Bureau have sought to maintain industry input. In 1997, the Program established an Advisory Council composed of over 20 industry representatives to provide recommendations to the Program Administrator. In 2001, the Bureau formed a Technical Advisory Committee (TAC) composed of seven members, six of whom were licensees representing public and private schools, chain salons and the medical field, and one of whom was a public member. The Bureau seeks input from the TAC on complex technical issues relating to industry practice. Although the Department appoints the members, their participation is of an advisory nature and they have no formal policy making authority or powers. In 2002, the Department Director required all Bureaus within the Department to appoint a majority of public members to their advisory committee. The Bureau expects to have these appointments made by September 1, 2002.

## ⇒ **SIGNIFICANT CHANGES SINCE LAST REVIEW**

Since the 1996 Sunset Review, the Bureau has initiated many enhancements to its operation. Regulatory changes include the adoption of regulations outlining cleaning and disinfection requirements for whirlpool foot spas, and increases in the amounts of administrative fines assessed for practice act violations. The following is a summary of some of these changes.

### **I. REGULATORY CHANGES**

**A. Whirlpool Foot Spas:** In response to a community outbreak of skin boils during the summer/fall 2000 in Santa Cruz County, the Bureau promulgated emergency regulations regarding disinfection of whirlpool foot spas. The Bureau became involved when the source of the outbreak was linked to contaminated whirlpool foot spas used as part of a pedicure procedure within a single nail salon in Watsonville, California. By December 2000, Santa Cruz County health officials identified 109 probable cases of the bacteria causing the boils. This outbreak highlighted the need for strict disinfection guidelines for these whirlpool foot spas, which have become popular in spas and salons over the past 10 years.

The emergency regulations promulgated by the Bureau were developed in consultation with Department of Health Services (DHS) and outlined a required cleaning protocol for all licensees using the foot spas. The emergency regulations became effective May 16, 2001 and the permanent regulations became effective May 29, 2002. Fines for violations of these regulations range from \$100 to \$500 for first, second, and third offenses. Sporadic cases of the disease are now being identified throughout the country and the Bureau is consulting with other states to assist them in adopting similar standards.

**B. Same Day Licensure:** Current regulations require the Bureau to issue licenses to passing examination candidates the same day they are examined. The Bureau is the only regulatory body under the DCA to issue licenses to candidates on the day of the examination. To meet this requirement, approximately 23,000 licenses a year are pre-printed and sent weekly by courier from the Employment Development Department (EDD) printing plant to the two examination sites. Of these licenses, less than 50% are issued and the remainder must be shipped back to Bureau headquarters, audited, voided, and destroyed, requiring additional staff time and resources. This weekly transfer and destruction of pre-printed licenses is not only costly, but also presents a significant security risk by increasing the opportunity for theft, loss and fraudulent use.

In the 1996 Sunset Review, the JLSRC commented on the Board's failure to maintain adequate security over the licenses issued at the exam sites. Additionally, 239 Bureau licenses were misplaced and believed to have been lost in transit in September 2000. Although they were subsequently recovered, the loss of these licenses and the earlier concerns from the JLSRC prompted the Bureau to request an audit of the licensing process by the Department's Office of Internal Audits. The Internal Audit report made several recommendations, including that the Bureau should determine if there are viable alternatives to the same day licensing process.

In response to the audit, the Bureau initiated emergency rulemaking to repeal the same day license requirement and instead require the Bureau to issue licenses within 15 working days. The Bureau held a public hearing and took comments from industry members who expressed concerns that eliminating same day licensing would delay a licensee's ability to go to work the next day. The Bureau addressed these concerns by revising the proposed regulations to require the issuance of licenses within 10 working days, and by developing a plan to allow candidates to use the Internet and/or toll-free telephone system to obtain their results no later than the next morning. This would allow licensees to work before receipt of their paper license. The Bureau completed the rulemaking process and submitted the regulations to the Office of Administrative Law (OAL) for final review. However, due to concerns expressed by the Senate Budget Subcommittee No. 4 and opposition by certain industry segments, the Bureau withdrew the regulations to provide time for additional discussion. Subsequently, the Legislature added language to the 2002/03 State budget that said, "The license shall be issued by the bureau on the same day that the applicant satisfactorily passes the examination."

**C. Cite and Fine Program:** In 1994, the Board implemented a citation and fine program, which is discussed in greater detail later in this report. The program allows inspectors to issue citations with fines to licensees for failing to follow health and safety rules and for unlicensed activity. Fine amounts escalate for first, second, and third offenses. Most fines are waivable upon the first offense if corrected within 30 days. Fines for second and third offenses range from \$50 to \$1000.

The Bureau is looking at ways to make this program more effective. Due to the relatively low fine amounts, the Bureau has found that the fines do not deter health and safety violations and other violations of the Bureau's rules and regulations. Therefore, in order to encourage increased compliance with the rules and regulations and protect the health and safety of consumers, the Bureau is drafting regulations to increase the amount of administrative fines assessed to licensees and schools.

## **II. LEGISLATIVE CHANGES**

**A. Enforcement Enhancement:** The Department sponsored legislation in 2002 (SB 1957, Polanco) that would enhance the Bureau's enforcement authority by allowing the immediate closure of salons if, upon inspection, they are found to have health and safety violations of such a severe nature as to pose an immediate threat to public health and safety. This authority was pursued, in part, as a response to the situation that occurred in Watsonville (see discussion on page 2). This bill would also allow the Bureau to inspect a salon before issuing an establishment license; ensure the privacy of licensees by allowing them to provide an address of record other than their home address; prohibit the Bureau from renewing a license if the licensee has failed to pay cost recovery; and allow the Bureau to cite schools for health and safety violations on the first offense, rather than just provide a warning.

**B. Hair Braiding:** Prior to 1997, the Board held that hair braiding services fell within the scope of practice for cosmetology. In 1997, a federal court case (*Cornwell v. Hamilton*) challenged this practice contending that the cosmetology licensing requirements were unconstitutionally applied to hair braiding services. In 1999, the Court found in favor of the plaintiff and ruled that the 1600-hour cosmetology course and subsequent licensing examination were not rationally related to the plaintiff's hair braiding activities.

Subsequent legislation (SB 235, Haynes, Chapter 37, Statutes of 2000) exempted the practice of hair braiding, as narrowly defined, from licensure requirements by the Bureau. As exempted, hair braiding may not include shampooing, cutting, or use of chemicals.

**C. Gender Price Discrimination:** In 1995 the Legislature passed AB 1100 (Speier, Chapter 866, Statutes of 1995), which specifically prohibited price discrimination based on gender. Gender-based discrimination in pricing commonly occurs in the sale of services related to haircuts, laundry, dry cleaning, and alterations. However, unfair pricing practices continued even after this bill was enacted.

Legislation in 2001 (AB 1088, Jackson, Chapter 312, Statutes of 2001) strengthened this law by requiring dry cleaners, tailors and hair salons to conspicuously post their prices and provide a price list to consumers upon request. Although the Bureau does not have specific enforcement authority under this law, it does respond to complaints from consumers and informs salons of this new provision. During establishment inspections, the Bureau inspectors check for compliance with AB 1088 and hand out a copy of the legislation. When complaints are received, the complainant is advised that the Bureau does not have jurisdiction to take legal action on the complaint, but that the Bureau will forward the complaint to the Department of Fair Employment and Housing for action.

### III. ADMINISTRATIVE REFORMS

**A. Online Licensing:** As part of the Governor's initiative to create a one-stop Internet portal for access to eGovernment services, the Bureau was one of the first programs in California to make professional licensing services available online 24 hours a day, seven days a week. In order to prepare for online licensing services, the Bureau re-engineered and standardized its processes for all licensing categories. In May 2001, a cosmetologist could renew his/her license, make an address change, or apply for a duplicate license all online. In December 2001, all other license types could renew online, request address changes and duplicate licenses, and apply for examination. This has resulted in a streamlined process that provides greater convenience for licensees.

**B. Operation Reforms:** In April 2002, the Bureau met with the Department's eGovernment, Planning, and Research Program (EPRP) to update and finalize its strategic plan. The two-year strategic plan contains an action plan and timeframes with assigned responsibilities in each of the core business functions of the Bureau. The plan also contains the Bureau's mission and vision. The Bureau will develop performance outcomes and measures for the strategic plan by December 1, 2002.

- The Bureau is currently working with EPRP to conduct a workload and staff resource analysis to identify resource needs to complete the licensing process from receipt of application through evaluation to examination. The analysis will include application volume and workload data. The Bureau will also develop a procedure manual.
- The Bureau implemented changes to its policies and procedures to address processing delays in its complaint and enforcement activities.
- In order to make inspections more effective, the Bureau is currently revising the Inspection Report form to utilize a check-box system to record violations rather than using a narrative format. The revised form should be completed by December 1, 2002. Recently, the Bureau adopted a revised Investigative Report format recommended by the AG's Office in order to improve the efficiency of case processing and review by the AG.

**C. Technical Advisory Committee:** In 2001, the Bureau appointed a seven member Technical Advisory Committee (TAC) consisting of industry representatives and one public member. The Bureau consults with the Technical Advisory Committee when developing new policies. During the past year, the Bureau held five meetings with the TAC in which the TAC provided input on emerging issues such as skin care practices, nail file disinfection, and changes in training curricula. The Bureau also held two public forums on nail file disinfection and changes in skin care practices (a further discussion of these forums can be found under Industry and Consumer Outreach and Education on page 24).

**D. School Oversight:** The Bureau is responsible for establishing school curricula (B&P § 7362), school size, and minimum equipment standards, as well as enforcing health and safety standards. BPPVE is responsible for student protection and ensuring financial solvency of schools. The bureaus have formed an active working relationship to ensure that schools meet all requirements for licensure before being licensed or approved by either bureau.

The Bureau and BPPVE work collaboratively on school inspections and share information on a daily basis regarding school compliance. Since 2000, 163 school inspections have occurred

resulting in the discovery of over 800 health and safety violations and failure to meet minimum equipment standards.

**E. Relocation of the Los Angeles Exam Facility:** The Bureau has two examination facilities; one in Northern California (Fairfield) and one in Southern California (Los Angeles). The Bureau administers over 23,000 examinations per year. The Southern California examination facility, located in the mid-Wilshire area of downtown Los Angeles, conducts approximately 16,000 of those examinations. Each candidate is required to bring a person to serve as a model for the practical portion of the examination.

In an effort to improve the level of service provided to examination candidates, the Bureau is trying to relocate the Southern California examination site to a larger, more modern facility. The efforts to identify a new facility began in the early 1990s. The current facility was built in the late 1950s and does not have the infrastructure to accommodate so much daily usage. In 2001 and 2002, the Bureau was granted authority needed for moving costs and tenant improvements.

Pursuant to Government Code § 14669, the Department of General Services (DGS) is conducting the siting process for the new facility. The DGS, with assistance from the Bureau, developed criteria for the selection of a new Los Angeles region examination site.

In Spring 2002, Senate Budget Subcommittee No. 4 directed the Bureau to expand the site selection search to include properties East of Interstate freeway 605. Additionally, the Budget Subcommittee requested the Bureau consult the TAC on the site selection. The Bureau and DGS expanded the search to address properties located East of Interstate freeway 605. The Bureau and DGS are reviewing all possible sites. In May 2002, the Bureau provided information to the TAC on the status of the examination site relocation.

**F. Disciplinary Review Committee and Remedial Health and Safety Class Pilot:** Licensees contesting administrative fines appeal to the Bureau's Disciplinary Review Committee (DRC). There are two Committees appointed by the Department Director, each composed of two licensees and one public member. One Committee hears appeals in Northern California, and the other hears appeals in Southern California. A licensee may contest or appeal any of the following aspects of a citation: 1) the occurrence of a violation of the Barbering and Cosmetology Act or regulation; 2) the time period for correction, if any; and/or 3) the amount of the fine. The DRC may vote to uphold, modify or dismiss the violations and fines.

Members of the Bureau's DRC have noted that a large number of violations were for licensees who repeatedly failed to follow the Bureau's health and safety laws and regulations. To address this issue, the Bureau launched a pilot remedial education course in June 2002 to provide specific instruction on health and safety rules and disinfection procedures. In order to qualify for the course, a licensee must stipulate to their citation and have no consumer complaints or enforcement actions pending. As an incentive to take the course, the Bureau will waive the fines; however, the citation will remain on a licensee's record.

**G. Increasing Examiner/Student Ratio for Practical Exam:** In 1998, the Office of Examination Resources (OER) advised the Bureau that the current ratio of one examiner to eight candidates during the practical examination was not sufficient to provide a valid and legally defensible practical examination. Additionally, OER stated that the one-to-eight examiner to candidate ratio was not providing the most reliable and accurate method of grading the candidates. Since it appeared nearly impossible for one examiner to observe and grade the



actions of eight candidates performing four different services simultaneously, OER recommended that the Bureau increase the ratio to two-to-eight. Without the change, OER advised, unqualified candidates could enter the workforce and potentially cause harm to consumers, or qualified candidates could fail and not be able to enter the workforce.

In response, the Bureau sought additional funding, which was approved in the 2000/01 fiscal year, for a two-year augmentation of \$447,000 and the hiring of 10.8 new examiners to increase the examiner to candidate ratio from one-to-eight, to two-to-eight. The two-to-eight ratio was conducted on a rotational basis for each of the examinations in order to test its efficacy. The pilot program ended on June 30, 2002. The proposed 2002/03 budget includes a continuation of \$447,000 to make permanent 10.8 expert examiner positions to maintain the current examiner to candidate ratio of one to four, in order to continue a legal and valid examination.

**H. Computer Based Testing:** The Department has directed the Bureau to consider computer based testing. The Bureau has initiated discussion with computer based testing vendors. Several Department boards and bureaus use the Department Master Services Agreement (MSA) with Experior Assessments, LLC, to provide computer based licensing examinations. The Bureau is working with OER to determine the most efficient method for the cost-effective implementation of computer based testing under the MSA.

#### ⇒ LICENSING DATA

The Bureau had approximately 420,000 licensees at the end of FY 2000/01, which included 376,000 personal operator licenses, 4,500 instructor licenses, 2,500 apprentice licenses, and 37,000 licensed establishments where barbering, cosmetology, electrology and related services are provided. The Bureau's licensee population has increased slightly since 1996, from approximately 416,000, to the current 420,000.

Since the last sunset review, the Bureau has denied more applications for failure to disclose criminal convictions and social security number discrepancies. Once an application is denied, an applicant has 60 days to request an appeal hearing or wait one year from the denial date to submit a new application. Of the 85 denials that were appealed during the past four fiscal years, 39 were withdrawn by the applicant prior to the hearing, and 27 were upheld at the hearing.

Additionally, the number of new licenses issued each year has decreased by approximately 36 percent since 1995/96. This reduction can be attributed in part to the decrease in exam passage rates, particularly on the written portion of the examination.

The following chart details the licensing data for the past four fiscal years:

LICENSING DATA FOR ALL PROFESSIONS	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
<b>Total Licensed</b>	416,368	416,889	416,382	419,896
<b>Applications Received</b>	36,794	33,840	28,561	34,278
<b>Applications Denied<sup>1</sup></b>	1,262	147	182	134
<b>Licenses Issued</b>	15,416	14,119	12,675	13,960
<b>Renewals Issued</b>	152,730	156,397	152,152	159,497

<b>Statements of Issues Filed</b>	10	22	23	28
<b>Statements of Issues Withdrawn</b>	4	9	11	15
<b>Applications Denied</b>	14	15	8	10
<b>Application for Exam Granted</b>	2	3	3	9

<sup>1</sup> Applications denied for a criminal conviction and/or social security discrepancy per B&P § 480. High number in FY 1997/1998 due to disciplinary actions taken against two cosmetology schools for fraudulent applications.

## ⇒ Licensee Data

<b>OTHER LICENSURE CATEGORIES</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
<b>Total Licensees (By Type)</b>	<b>416,386</b>	<b>416,889</b>	<b>416,382</b>	<b>419,896</b>
Establishments	35,739	36,493	36,229	36,962
Barbers	21,513	21,427	21,310	21,149
Apprentices	1,194	1,484	1,839	2,503
Instructors	5,295	5,035	4,739	4,509
Cosmetologists	247,978	245,267	242,999	241,617
Electrologists	3,596	3,548	3,473	3,355
Manicurists	86,716	88,007	88,829	90,592
Estheticians	14,355	15,628	16,964	19,209
<b>Licenses Issued (By Type)</b>	<b>15,416</b>	<b>14,124</b>	<b>13,706</b>	<b>13,961</b>
Establishments	5,020	4,193	4,744	4,618
Barbers	543	581	540	501
Instructors	24	46	46	32
Cosmetologists	6,153	6,414	6,206	5,953
Electrologists	113	66	36	24
Manicurists	7,292	5,343	4,872	5,034
Estheticians	1,291	1,674	2,006	2,417
<b>Renewals Issued (By Type)</b>	<b>152,730</b>	<b>156,400</b>	<b>152,423</b>	<b>159,500</b>
Establishments	13,121	12,624	12,697	12,767
Barbers	8,657	8,522	8,736	8,283
Instructors	713	1,099	904	1,008
Cosmetologists	96,514	97,840	92,950	97,407
Electrologists	1,294	1,328	1,244	1,227
Manicurists	27,348	29,477	30,061	32,104
Estheticians	5,083	5,510	5,831	6,704

## BUDGET AND STAFF

### CURRENT FEE SCHEDULE AND RANGE

⇒ Fees which are main source of revenues, when renewal is required, date of last fee(s) adjustment and any plans to increase fees and for what reasons.

The Bureau has two primary sources of revenue: license renewal fees, and administrative fines. All licenses must be renewed every two years. Renewal fees are primarily used to fund the Bureau's enforcement and inspection activities. Application and examination fees are not considered revenue because they are used solely to cover examination development and administration.

The Bureau collects approximately \$900,000 annually in examination fees, but spends an average of \$3.4 million on examination development and examination administration. As the licensing population continues to grow, the gap between examination fees and expenditures will also continue to grow.

FEE SCHEDULE	ORIGINAL FEE	CURRENT FEE	STATUTORY LIMIT	LAST ADJUSTMENT
<b>Barber*</b>				
Application., Exam, & License	Not Avail.	\$50.00	\$50.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Cosmetology</b>				
Application., Exam, & License	\$32.00	\$50.00	\$50.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Electrology</b>				
Application., Exam, & License	\$32.00	\$50.00	\$50.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Establishment</b>				
Application & License	\$50.00	\$50.00	\$80.00	1993
Initial Inspection	<b>No Authority to Charge Fee</b>		N/A	N/A
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Esthetician</b>				
Application., Exam, & License	N/A	\$40.00	\$40.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Instructor (Barber<sup>1</sup>/Cosmo)</b>				
Application., Exam, & License	\$38.00	\$50.00	\$50.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Manicurist</b>				
Application., Exam, & License	\$21.00	\$35.00	\$35.00	1993
Renewal	Not Avail.	\$40.00	\$50.00	1993
Delinquent Renewal	Not Avail.	\$20.00	N/A	1993
License Replacement	Not Avail.	\$10.00	N/A	1993
<b>Mobile Units</b>				
Application	N/A	\$50.00	\$50.00	1993
Initial Inspection & License	N/A	\$100.00	\$100.00	N/A
Renewal	N/A	\$40.00	\$50.00	N/A
<b>Apprentice</b>				
Application & License	N/A	\$25.00	\$25.00	1993
Renewal	N/A	N/A	N/A	N/A
<b>Name Change</b>	<b>No Authority to Charge Fee</b>		N/A	N/A
<b>Address Change</b>	<b>No Authority to Charge Fee</b>		N/A	N/A
<b>Certification Request</b>	<b>None</b>	<b>\$10.00</b>	N/A	N/A
<b>Records Request</b>	<b>None</b>	<b>\$10.00</b>	N/A	N/A
<b>CE Provider Approval</b>	<b>No Authority to Charge Fee</b>		N/A	N/A
<b>CE Course Approval</b>	<b>No Authority to Charge Fee</b>		N/A	N/A
<b>School Approval</b>	<b>No Authority to Charge Fee</b>		N/A	N/A

<sup>1</sup>Fees were increased after the Board of Barber Examiners and the Board of Cosmetology were merged in 1992. There was no data available on the fees for the barber and barber instructor license categories prior to the merger.

### **REVENUE AND EXPENDITURE HISTORY**

The Bureau's total expenditures operating expenses have increased largely due to the approved relocation of the Los Angeles Examination Site, increased exam development costs, and increased costs for the AG and Office of Administrative Hearings. FY 1997/98 included one-time costs for data processing (the automated tracking system) and OER contracts. Therefore, operating expenses initially increased in FY 1997/98. The Bureau's Personal Services costs have increased on a normal trend. A more detailed description of the Bureau's major budget augmentations can be found in Appendix A.

REVENUES	ACTUAL					PROJECTED
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02	FY 2002/03
Licensing Fees	\$ 8,100,000	\$ 8,219,000	\$ 8,433,000	\$ 9,012,000	\$ 8,749,000	\$ 8,538,000
Fines & Penalties <sup>1</sup>	\$ 334,000	\$ 389,000	\$ 408,000	\$ 414,000	\$ 1,538,000	\$ 2,032,000
Other	\$ 15,000	\$ 17,000	\$ 20,000	\$ 23,000	\$ 95,000	\$ 94,000
Interest	\$ 440,000	\$ 572,000	\$ 748,000	\$ 778,000	\$ 446,000	\$ 74,000
<b>TOTALS</b>	<b>\$ 8,889,000</b>	<b>\$ 9,197,000</b>	<b>\$ 9,619,000</b>	<b>\$10,227,000</b>	<b>\$10,828,000</b>	<b>\$10,738,000</b>
<sup>1</sup> Fines and penalties consist of late renewal fees and don't include revenue from inspection or enforcement activities.						

EXPENDITURES	ACTUAL					PROJECTED
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02	FY 2002/03
Personnel Services	\$ 3,750,000	\$ 3,494,000	\$ 3,463,000	\$ 3,948,000	\$ 4,078,000	\$ 4,407,000
Operating Expenses	\$ 5,168,000	\$ 4,548,000	\$ 5,149,000	\$ 5,397,000	\$ 6,822,000	\$ 7,267,000
(-) Reimbursements	\$ 56,000	\$ 115,000	\$ 69,000	\$ 140,000	\$ 219,000	\$ 57,000
(-) Distributed Costs	\$ --	\$ --	\$ --	\$ --	\$ --	\$ --
<b>TOTALS</b>	<b>\$ 9,462,000</b>	<b>\$ 7,927,000</b>	<b>\$ 5,543,000</b>	<b>\$ 9,205,000</b>	<b>\$10,681,000</b>	<b>\$11,617,000</b>

### **Expenditures by Program Component**

The Bureau currently spends 43% of its budget on enforcement related activities including inspections, followed by 39% for examination related activities, 10% for licensing functions, and 8% for administrative functions. The Bureau's testing costs are higher than other boards and bureaus within the Department largely because the practical examination administration requires that the Bureau maintain and staff exam facilities. The Bureau also administers examinations daily, while most other Department boards and bureaus only test quarterly (refer to the Examination Administration section on page 13).

EXPENDITURES BY PROGRAM COMPONENT	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02	Average % Spent by Bureau
Examination	\$ 4,371,482	\$ 2,834,908	\$ 3,201,135	\$ 3,317,247	\$ 3,419,285	<b>37.4%</b>
Licensing	\$ 84,615	\$ 781,607	\$ 826,033	\$ 909,317	\$ 1,634,142	<b>11.2%</b>
Inspections	\$ 1,664,811	\$ 1,457,088	\$ 1,757,232	\$ 1,904,793	\$ 2,339,047	<b>19.9%</b>
Enforcement	\$ 1,812,345	\$ 2,215,251	\$ 1,960,189	\$ 2,208,378	\$ 2,227,610	<b>22.9%</b>
Administrative	\$ 628,745	\$ 638,261	\$ 798,321	\$ 865,485	\$ 1,010,654	<b>8.6%</b>
<b>TOTALS</b>	<b>\$ 9,461,998</b>	<b>\$ 7,927,115</b>	<b>\$ 8,542,910</b>	<b>\$ 9,205,220</b>	<b>\$10,680,378</b>	<b>100.0%</b>

## **FUND CONDITION**

### **⇒ Reserve level, spending trends, budget projections, adequacy of fees. Comparison of Revenues, Expenditures and Reserves.**

The Barbering and Cosmetology Fund reserve historically has been maintained at a level at least equal to one year of expenditures. However, the fund reserve has gradually decreased in recent years primarily due to increased costs for exam administration and enforcement program activities. Recently, expenditures have started to equal, or outpace, revenues. Therefore, the Bureau's fund balance has begun to decrease significantly. While there is no statute requiring the Bureau to maintain a minimum fund balance, a fund reserve of at least 3 months (and no more than 6 months) is considered fiscally prudent. During the State's budget challenges in Fiscal Year 2002/03, \$9,000,000 of the Bureau's \$11,000,000 reserve was loaned to the General Fund to help address the state's budget deficit.

The FY 2002/03 Governor's Budget increases the Bureau's expenditure authority by \$1.5 million. This increase includes \$519,000 for relocation of the Los Angeles examination facility, \$137,000 for enforcement activities, and the remainder for exam development and examiners. The Bureau's FY 2002/03 ending fund balance of approximately \$2.6 million is equivalent to three months reserve.

ANALYSIS OF FUND CONDITION	FY 1999/00	FY 2000/01	FY 2001/02	FY 2002/03 (Projected)	FY 2003/04 (Projected)	FY 2004/05 (Projected)
Total Reserves, July 1	\$ 9,633,000	\$11,032,000	\$12,359,000	\$12,582,000	\$ 2,649,000	\$ 2,200,000
Prior Year Adjustment	\$ 323,000	\$ 32,000	\$ 22,000			
Total Revenue & Transfers <sup>1</sup>	\$ 9,619,000	\$10,500,000	\$10,828,000	\$1,738,000	\$10,738,000	\$10,738,000
Total Resources	\$19,575,000	\$21,564,000	\$23,209,000	\$14,266,000	\$13,387,000	\$12,938,000
Total Expenditures <sup>2</sup>	\$ 8,543,000	\$ 9,205,000	\$10,681,000	\$11,617,000	\$11,187,000	\$11,298,000
Reserve, June 30	\$11,032,000	\$12,359,000	\$12,528,000	\$ 2,649,000	\$ 2,200,000	\$ 1,640,000
<b>MONTHS IN RESERVE</b>	<b>14.4</b>	<b>13.9</b>	<b>12.9</b>	<b>2.8</b>	<b>2.3</b>	<b>1.7</b>

<sup>1</sup> FY 00/01 includes \$273,000 transfer from the Malibu/Ambramavitz lawsuit. FY 02/03 includes a \$9 million General Fund loan.

<sup>2</sup> Total expenditures are gross expenditures minus reimbursements.

## LICENSURE REQUIREMENTS

### **EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS**

#### **⇒ Minimum Education, Experience and Examination Requirements for Licensure**

All licensing examination applicants are required to apply for the examination and pay the required fee. Out-of-state applicants may be admitted to the examination based upon previous practice or prior education and training. The Bureau receives approximately 400 to 500 applications from other states or countries annually. Those out-of-state applicants whose previous experience does not qualify them for immediate admission to an examination receive credit for their training, education and experience, but are advised as to what other requirements they must fulfill. Upon completion of supplementary study and training in a Bureau-approved school, out-of-state applicants are then qualified to take the examination.

All applicants seeking licensure—cosmetologist, barber, esthetician, and manicuring applicants—must be at least 17 years old and have completed the 10<sup>th</sup> grade or its equivalent. Apprenticeship program applicants must be over 16 years old and have a 10<sup>th</sup> grade education or its equivalent. Electrologist and instructor applicants must be at least 17 years old with a 12<sup>th</sup> grade education or its equivalent. Specific requirements for each licensing category as outlined in the Bureau's regulations are included in Appendix B.

Minimum Qualifications for Licensure							
License Category	Education	Experience	Exam		Hours	Months	
			Written	Practical		Part-time	Full-time
Apprentice <sup>1</sup>	12 <sup>th</sup> Grade	32 hrs p/wk	No	No	3,200	37	20
Barber	10 <sup>th</sup> Grade	None	Yes	Yes	1,500	17	9
Cosmetology	10 <sup>th</sup> Grade	None	Yes	Yes	1,600	18	9
Electrology	12 <sup>th</sup> Grade	None	Yes	Yes	600	9	3½
Esthetician	10 <sup>th</sup> Grade	None	Yes	Yes	600	9	3½
Instructor	10 <sup>th</sup> Grade	None	Yes	Yes	600	9	3½
Manicurist	10 <sup>th</sup> Grade	None	Yes	Yes	400	4½	2
Out of State/Country	10 <sup>th</sup> Grade	3 mos = 100 hrs	Yes	Yes	N/A	N/A	N/A

<sup>1</sup> Although there is no examination required to receive an apprentice license, apprentices are required to take the appropriate licensing examination at the completion of their apprenticeship hours in order to be licensed as a barber or cosmetologist.

#### **⇒ EXAMINATION VALIDATION**

The Bureau utilizes the Department's OER for test development, validation, and item analyses for its examination process. Pursuant to B&P § 139, OER recommends that occupational analyses be conducted every three to seven years. The Bureau completed an OA for the barbering profession in 1996, and the cosmetology profession in 1998. Budgetary constraints have limited the Bureau to conducting only one OA per fiscal year.

The Bureau recognized that OAs had not been conducted for quite some time. As a result, the Bureau requested an ongoing augmentation of \$450,000 to cover the cost of conducting OAs for all of the licensing categories. This request was approved for FY 2002/03 and the Bureau began the manicurist OA in July 2002. The esthetician OA is scheduled to be conducted during the 2002/03 fiscal year.

EXAMINATION TYPE	LAST VALIDATED	COMPLETION DATE
Cosmetologist	July 1998	2003
Barber	May 1996	2003
Electrologist <sup>1</sup>	November 1987	2002
Manicurist <sup>1</sup>	March 1987	2002
Esthetician	March 1987	2003
Cosmetology Instructor <sup>2</sup>	January 1987	2004
Barber Instructor <sup>2</sup>	N/A	2004
<sup>1</sup> The occupational analyses for both the electrology and manicurist examinations are currently being conducted. <sup>2</sup> The cosmetology instructor and barbering instructor occupational analyses have been assigned the lowest priority because the size of the license pool is in decline.		

### ⇒ EXAMINATION ADMINISTRATION AND PASSAGE RATES FOR ALL CANDIDATES FOR THE WRITTEN AND PRACTICAL EXAMINATION

The Bureau has two permanent examination facilities. One is located in Los Angeles and the other in Fairfield. The examinations are scheduled Monday through Friday at both locations. In fiscal year 2000/01, the Bureau conducted 16,072 examinations in Los Angeles and 7,259 in Fairfield. California provides a two-part licensing examination that consists of a written portion and a practical portion. Both parts of the examination are taken on the same day and results are issued after completion of the examination.

The written portion of the examination tests the candidate's general knowledge of the Bureau's health and safety laws and regulations. The practical portion of the examination tests the candidate's actual minimum competency in performing the required services for that licensing category.

Candidates often pass one portion of the examination but fail the other. As shown in the following table, the pass rates for the practical portion of the examination are generally higher than the pass rates for the written portion. Candidates who fail one or both parts of the exam have one year from the date of their examination to reapply, retake, and pass the failed portion of the examination.

If they do not pass the failed portion of the examination within the one-year time frame, they must reapply and take the entire examination again. Currently, there is no limitation on the number of times an individual can take the examination after failing, and there are no requirements for supplemental training in those areas of deficiency.

⇒ **EXAMINATION ADMINISTRATION AND PASSAGE RATES FOR ALL CANDIDATES FOR THE WRITTEN AND PRACTICAL EXAMINATION**

<b>WRITTEN AND PRACTICAL EXAMINATIONS (By Type)</b>				
<b>COSMETOLOGIST</b>	<b>1997/98</b>	<b>1998/99</b>	<b>1999/00</b>	<b>2000/01</b>
<b>Candidates (Written)</b>	10,758	10,181	6,312	9,246
<b>Pass %</b>	60%	65%	67%	70%
<b>Candidates (Practical)</b>	8,531	8,567	6,840	9,038
<b>Pass %</b>	79%	80%	75%	71%
<b>BARBER</b>				
<b>Candidates (Written)</b>	660	768	719	676
<b>Pass %</b>	11%	14%	6%	6%
<b>Candidates (Practical)</b>	660	738	650	679
<b>Pass %</b>	90%	94%	90%	89%
<b>MANICURIST</b>				
<b>Candidates (Written)</b>	11,367	8,301	5,124	7,435
<b>Pass %</b>	66%	63%	66%	71%
<b>Candidates (Practical)</b>	9,657	7,164	5,511	6,968
<b>Pass %</b>	77%	84%	83%	78%
<b>ESTHETICIAN</b>				
<b>Candidates (Written)</b>	2,180	2,400	2,069	3,522
<b>Pass %</b>	60%	69%	69%	70%
<b>Candidates (Practical)</b>	1,572	1,914	2,303	3,021
<b>Pass %</b>	93%	93%	92%	88%
<b>INSTRUCTOR<sup>1</sup></b>				
<b>Candidates (Written)</b>	57	153	63	111
<b>Pass %</b>	56%	38%	40%	36%
<b>Candidates (Practical)</b>	53	120	40	92
<b>Pass %</b>	47%	44%	39%	45%
<b>ELECTROLOGY</b>				
<b>Candidates (Written)</b>	149	94	37	43
<b>Pass %</b>	77%	63%	61%	53%
<b>Candidates (Practical)</b>	153	100	35	35
<b>Pass %</b>	75%	72%	76%	77%

<sup>1</sup> Includes both barber and cosmetology instructors.

The required passing grade for all examinations is 75%. Except for the barber examination, all candidates must pass the written portion of the exam and the practical portion of the exam separately. Cosmetology, manicuring, esthetics and electrology candidates must achieve 300 points overall (out of a possible 400 points), including a score of 225 on the practical portion of the examination, and 70 on the written portion. In order to achieve the 300 overall points, the candidates must earn the additional five points in either portion of the examination. Barber candidates achieve a passing grade if the combined total points from the written and practical portions of the examination total 75 of 100.



## ⇒ APPLICATION PROCESSING TIMEFRAMES

There are different licensing pathways in which an individual may qualify for the examination (please see Licensing Requirements, Appendix B). An individual may qualify through training in an approved school, previous licensure in California, experience and/or training in another state or country, or through the apprenticeship program. The Bureau's regulations specifically outline the requirements for licensure.

### A. The Pre-Application Process

Barbering, cosmetology, and electrology students may pre-apply for their examination after completing 75 percent of their required course hours and curriculum. Manicuring and esthetician students may pre-apply after completing 60 percent of the required hours and coursework. Pending legislation (AB 2743, Lowenthal) proposes to offer the same option to apprentices who have completed 75 percent of their training. Students indicate their anticipated date of graduation on their application and pay a \$9.00 processing fee in addition to the regular application fee. These students are then scheduled into examination slots that have been set aside for pre-application candidates. By law, the Bureau must examine pre-application candidates with 10 working days of their graduation date.

The pre-application program was created through legislation (SB 985, Chapter 1015, Statutes of 1991), and became effective in 1992. The pre-application program was created to benefit the top students by ensuring that they received an examination date shortly after graduation. Schools were concerned because some students were waiting approximately 16 to 20 weeks for an examination date due to the high volume of applications. However, the popularity of the program has increased and modifications may be needed to accommodate the increase in pre-application candidates.

### B. Application Process

Applicants who cannot use the pre-application process, including licensees from other states and countries and those who are retaking the test (there is an overall failure rate of over 30%), must wait as long as 20 weeks to be scheduled or re-scheduled for the exam. Even though the Bureau overbooks the sites, yet increasing demand for a fixed number of spaces is creating a long waiting time for non-pre-application candidates. A larger testing facility in Southern California could relieve some of the testing pressure and will lower, but not eliminate, wait times for non-pre-application candidates.

AVERAGE DAYS TO RECEIVE LICENSE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Application to Licensure <sup>1</sup>	116	111	141	134
Examination to Issuance <sup>2</sup>	Same Day	Same Day	Same Day	Same Day
Total Average Days	116	111	141	134

<sup>1</sup> The time from application to licensure includes students who pre-applied for their examination. These students apply 60 to 90 days prior to completion of their training hours and are not actually scheduled for examination until their training is complete.

<sup>2</sup> Currently, applicants who pass the complete examination (written and practical) are issued a license at the exam site on the same day (please see narrative on Same Day Licensure on page 3)

## CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

Continuing education is only required for licensed barbering and cosmetology instructors with an active license. Licensed instructors must complete 30 hours of continuing education in the teaching of vocational education during each two-year licensing period. Instructors may choose to place their licenses on inactive status, alleviating them of the continuing education requirement until they choose to return to active status.

## COMITY/RECIPROCITY WITH OTHER STATES

California does not have reciprocity with any other state. Individuals from other states and countries must meet eligibility requirements and take and pass both a written and practical examination, regardless of years of experience in other states or countries.

## ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
<b>Inquiries</b>	Total: N/A	Total: N/A	Total: N/A	Total: N/A
<b>Complaints Received (Source)</b>	Total: 3,515	Total: 2,057	Total: 2,490	Total: 2,458
Public	897	1,044	938	1,381
Licensee/Professional Groups	8	9	22	19
Governmental Agencies	1	2	17	17
Other <sup>1</sup>	2,609	1,002	1,513	1,041
<b>Complaints Filed (By Type)<sup>2</sup></b>	Total: 3,515	Total: 2,057	Total: 2,490	Total: 2,458
Incompetence/Negligence	137	159	123	205
Unprofessional Conduct	7	41	10	7
Fraud	358	253	215	229
Health & Safety	613	534	785	642
Unlicensed Activity	775	690	949	775
Personal Conduct	1,325	91	195	367
Other	300	289	213	233
<b>Complaints Closed<sup>3</sup></b>	Total: 3,534	Total: 1,745	Total: 2,612	Total: 2,475
<b>Investigations Commenced<sup>4</sup></b>	Total: 233	Total: 247	Total: 101	Total: 84
<b>Compliance Actions</b>	Total: 1,466	Total: 986	Total: 1,334	Total: 1,335
ISOs & TROs Issued	N/A	N/A	N/A	N/A
Citations and Fines	N/A	N/A	N/A	N/A
Public Letter of Reprimand	1,040	571	925	769
Cease & Desist/Warning	426	415	409	569
Referred for Diversion	N/A	N/A	N/A	N/A
Compel Examination	N/A	N/A	N/A	N/A
<b>Referred for Criminal Action</b>	Total: 54	Total: 52	Total: 40	Total: 15
<b>Referred to AG's Office<sup>5</sup></b>	Total: 60	Total: 78	Total: 87	Total: 119
Accusations Filed <sup>6</sup>	32	46	86	74
Accusations Withdrawn	2	5	4	3
Accusations Dismissed	1	1	8	2
<b>Stipulated Settlements</b>	Total: 9	Total: 17	Total: 10	Total: 6
<b>Disciplinary Actions</b>	Total: 28	Total: 40	Total: 40	Total: 123
Revocation	9	16	11	51
Voluntary Surrender	5	1	2	10
Suspension Only	0	0	0	0

Probation with Suspension	10	18	17	39
Probation	4	5	10	23
Probationary License Issued	N/A	N/A	N/A	N/A
<b>Probation Violations</b>	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Suspension or Probation Revocation or Surrender	N/A	N/A	N/A	N/A

<sup>1</sup> Other includes (but is not limited to) Bureau-initiated complaints from inspection reports.  
<sup>2</sup> Total will not match the ASP report, because not all categories are listed.  
<sup>3</sup> Complaints closed will not match the number filed since some cases were carried over from the previous FY.  
<sup>4</sup> The number of investigations commenced has dropped due to staffing shortages in the DOI (see narrative below).  
<sup>5</sup> Total accusations will not match the number filed since some cases were carried over from the previous FY.  
<sup>6</sup> Accusations filed include Petitions to Revoke.

## **ENFORCEMENT PROGRAM OVERVIEW**

During the 2000/2001 fiscal year, 42 percent of enforcement cases were generated as a result of Bureau inspections. Consumers initiated the remaining complaints. Internal complaints were typically for criminal convictions, social security number discrepancies, violations of the Bureau's health and safety regulations, unlicensed activity, use of illegal instruments, and/or interference with an inspection. Over the past four fiscal years, approximately 15% (624) of complaints were for consumer harm.

In fiscal year 2000/2001, there was a drop in the number of investigations commenced and cases referred for criminal action. This can be attributed to a change in policy at the DCA Division of Investigation (DOI) due to resource constraints. Beginning in 2001, DOI revised its investigation criteria to only accept cases that present or indicate an immediate or irreparable physical or mental harm to the public. DOI will investigate complaints that allege consumer harm, sexual misconduct and fraudulent activity.

In 1997, SB 1346 (Senate Committee on Business and Professions, Chapter 758, Statutes of 1997) was passed, which added unprofessional conduct to the grounds for which disciplinary action may be pursued. Since implementation of SB 1346, an average of 27 accusations were filed annually for incompetence, gross negligence or unprofessional conduct. The Bureau recognizes that code of conduct standards should be developed and has referred this issue to the Advisory Committee.

<b>NUMBER OF COMPLAINTS CLOSED, REFERRED FOR INVESTIGATION OR ATTORNEY GENERAL FOR DISCIPLINARY ACTION</b>				
	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
<b>COMPLAINTS RECEIVED</b>	<b>3,515</b>	<b>2,057</b>	<b>2,490</b>	<b>2,458</b>
Complaints Closed	3,534	1,745	2,612	2,475
Referred for Investigation	233	247	101	84
Accusations Filed	32	46	86	74
Disciplinary Action	28	40	40	123

## **CASE AGING DATA**

⇒ **Time frames for processing complaints, investigation of cases from completed investigation to formal charges being filed, and from filing of the accusation to final disposition of the case.**

Depending on the complaint allegations, various courses of action may be taken by Enforcement staff. These courses of action range from informal investigations performed in-house, to DOI investigations. Complaints that require informal investigations can usually be resolved within three months if the licensee comes into compliance by correcting the problem. On the other hand, complaints that require full-scale investigations may take as long as eight months to complete. If it is determined that administrative disciplinary action is necessary to deny, revoke or suspend the subject's license(s), it may take up to two years for the complaint to be resolved.

<b>AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES</b>				
	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Complaint Processing	213	220	201	206
Investigations	312	425	430	466
Pre-Accusation <sup>1</sup>	241	191	349	150
Post-Accusation <sup>2</sup>	247	304	182	216
<b>TOTAL AVERAGE DAYS<sup>3</sup></b>	<b>1,013</b>	<b>1,017</b>	<b>1,162</b>	<b>1,038</b>
<sup>1</sup> From completed investigation to formal charges being filed. <sup>2</sup> From formal charges filed to conclusion of disciplinary case. <sup>3</sup> From date complaint received to date of final disposition of disciplinary case.				

⇒ **Timeframes for closing of investigations and AG cases over past four years, and average percentage of cases taking over two to four or more years, and any decreases or increases in the percentage of cases being closed each year.**

If the Enforcement staff determine, as a result of the investigative report prepared by DOI, that administrative disciplinary action is necessary to deny, suspend or revoke the subject's license(s), the case is transmitted to the AG. The AG's Office then prepares the case for legal proceedings against the subject.

On average it takes the DOI two years to close a complaint. An average of 74 complaints are referred each fiscal year that are closed after investigation within the two-year period. On average, 12 of the 74 complaints referred take longer than two years to complete. Complaints that are referred to DOI take an average of 408 days (13 months) for an investigation to be completed.

The Enforcement Unit refers approximately 86 cases per fiscal year to the AG. On average it takes the AG two years to close a complaint that has been referred to them. On average it takes approximately 210 days (6 to 7 months) to resolve a complaint which does not result in a formal investigation and/or referral to the AG. Complaint processing may involve obtaining additional information, materials/facts and conducting inspections to verify compliance.

<b>BUREAU &amp; DOI INVESTIGATIONS CLOSED WITHIN:</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>	<b>AVERAGE % CASES CLOSED</b>
90 Days	24	8	20	17	<b>9%</b>
180 Days	35	20	32	18	<b>13%</b>
1 Year	69	55	68	25	<b>28%</b>
2 Years	48	59	149	40	<b>38%</b>
3 Years	5	14	14	41	<b>9%</b>
Over 3 Years	4	7	6	3	<b>3%</b>
<b>Total Cases Closed</b>	<b>185</b>	<b>163</b>	<b>289</b>	<b>144</b>	

<b>AG CASES CLOSED WITHIN:</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>	<b>AVERAGE % CASES CLOSED</b>
1 Year	10	6	9	32	<b>23%</b>
2 Years	13	20	16	64	<b>46%</b>
3 Years	3	7	18	14	<b>17%</b>
4 Years	3	2	6	11	<b>9%</b>
Over 4 Years	1	1	3	5	<b>4%</b>
<b>Total Cases Closed</b>	<b>30</b>	<b>36</b>	<b>52</b>	<b>126</b>	
<b>Disciplinary Cases Pending</b>	<b>89</b>	<b>107</b>	<b>174</b>	<b>102</b>	

### **CITE AND FINE PROGRAM**

The Board initiated the Cite and Fine program in December 1994. Administrative citations are issued for violation of the Bureau's rules and regulations, primarily related to health and safety issues. Violations range from improper disinfection to unlicensed activity, with fines ranging from \$25 to \$500 for first violations. Most fines are waivable on the first offense, provided the offense is corrected within 30 days. The fine amounts increase for second and third offenses. Fines levied against operators are also levied against establishment owners, since establishment owners are responsible for all activities in their establishment.

Several violations may be cited during a single inspection resulting in a considerable fine to the licensee. Inspectors issue an average of \$250,000 in fines each month. Licensees who have received a citation or fine from the Bureau have a statutory right to appeal the fines and appear before the Bureau's DRC (see page 6 for more discussion on the DRC).

Licensees appealing a citation must request a hearing before the DRC within 30 days. The DRC decides whether to uphold, modify, or dismiss the citation. Licensees also have the option of appearing before an Administrative Law Judge (ALJ) in addition to, or instead of, the DRC hearing. If the DRC decision has been made, the ALJ may uphold or overturn the decision. The decision of the ALJ is final and may not be appealed.

<b>CITATIONS AND FINES</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Total Citations	12,273	15,845	13,769	15,503
Total Citations With Fines	10,540	13,578	13,568	15,449
Amount Assessed	\$2,057,750	\$2,428,200	\$2,678,375	\$3,445,220
Reduced, Withdrawn, Dismissed <sup>1</sup>	117	91	56	32
<b>Amount Collected</b>	<b>\$414,261</b>	<b>\$523,545</b>	<b>\$698,447</b>	<b>\$1,041,273</b>
<sup>1</sup> Data reflects citations that were reduced, withdrawn or dismissed by the DRC or an ALJ. Also includes withdrawals by Bureau staff for invalid citations, as well as citations where one or more violations were dismissed but the remaining violations were upheld. Data is not inclusive of fines that were modified as a result of timely compliance for a first offense violation.				

In FY 2000/01, 52,918 of the 63,021 violations cited were for not following the correct disinfection or sanitation procedures (i.e., incorrect disinfection, failure to disinfect, improper sterilization procedures for instruments and equipment, improper storage of instruments, unsanitary conditions, and failure to dispose of non-disinfectable items, such as nail files and buffer blocks). Other violations included:

<b>TYPE OF VIOLATION</b>	<b>Number of Violations</b>
Unlicensed operators	669
Unlicensed establishments	867
Operating an establishment or providing services with an expired license	698
Employing unlicensed persons	496
Displaying an expired or invalid license	1,532
No photographic identification (i.e., California driver's license or identification card)	544
Use of illegal instruments, products, or methods	1,212
Failure to post health and safety rules	1,284
No licensee in charge	306
Refusal to allow, or interference with, the inspection	129
Lack of soap, towels, and/or hot running water for hand washing purposes	1,055
Problems associated with restroom facilities	1,099
Misrepresentation as a barber/cosmetologist	108

From FY 2000/01 through the first six months of FY 2001/02, the Bureau issued 1,211 citations for unlicensed operators, and 1,258 citations for unlicensed establishments. The Bureau performs unlicensed activity sweeps. During these sweeps, citations are issued only for unlicensed activity unless an establishment has egregious health and safety violations. Upon finding unlicensed operators, the Bureau levies fines against the establishment owner, but has no authority to impose penalties against non-licensees. The Bureau's inspectors are being trained by DOI to issue infraction citations against unlicensed persons and establishments. This will provide another tool for the Bureau against unlicensed activity.

## **DIVERSION PROGRAM**

This is not applicable to the Bureau.

## **RESULTS OF COMPLAINANT SURVEY**

### **⇒ The results of the Survey**

The JLSRC directed all Bureaus and Committees under review this year to conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters. The JLSRC supplied both a sample format and a list of seven questions, and indicated that a random sampling should be made of closed complaints for a four-year period. Consumers who filed complaints were asked to review the questions and respond to a 5-point grading scale (i.e., 5=satisfied to 1=dissatisfied).

The Bureau receives approximately 1,000 consumer complaints annually. In preparation for the Bureau's sunset review, the Bureau sent a Consumer Satisfaction Survey to a random selection of 400 complainants whose complaints were closed between 1997 and 2000. Of those surveyed, only 52 consumers responded, a 12% response rate. The overall results show that 56% were satisfied with the complaint process and 44% were dissatisfied with the Bureau's processes.

<b>CONSUMER SATISFACTION SURVEY RESULTS</b>					
<b>QUESTIONS</b>	<b>RESPONSES</b>				
<b># Surveys Mailed: 400</b>	<b>SATISFIED</b>	<b>DISSATISFIED</b>			
<b># Surveys Returned: 52</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>
1. Were you satisfied with knowing where to file a complaint and whom to contact?	29	3	4	3	11
2. When you initially contacted the Bureau, were you satisfied with the way you were treated and how your complaint was handled?	22	5	6	3	14
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action that the Bureau would take?	18	4	3	7	16
4. Were you satisfied with the way the Bureau kept you informed about the status of your complaint?	15	6	4	2	22
5. Were you satisfied with the time that it took to process your complaint and to investigate, settle, or prosecute your case?	14	8	4	7	17
6. Were you satisfied with the final outcome of your case?	15	7	2	1	25
7. Were you satisfied with the overall service provided by the Bureau?	18	4	3	4	22

## ENFORCEMENT EXPENDITURES AND COST RECOVERY

### AVERAGE COSTS FOR DISCIPLINARY CASES

⇒ **The average costs incurred by the Bureau for the investigation and prosecution of cases, and which type of cases average more than others.**

During fiscal year 1998/99, the cost per case was \$5,654, higher than usual. This was due to the discovery of approximately 107 fraudulent cosmetology licenses circulating in the industry. Although these cases were discovered during the 1997/98 fiscal year, the majority of these cases were investigated by DOI during the 1998/99 fiscal year.

During fiscal year 2000/01, the average cost per case was higher due to the outbreak of skin boils resulting from improper whirlpool foot spa disinfection in Watsonville, California (see page 2 for a more detailed explanation of this incident). This extensive investigation entailed working closely with officials from the County of Santa Cruz and DHS. The investigation included interviewing injured consumers, obtaining and reviewing medical records and other data (i.e., lab reports), and interviewing the establishment owner and employees. This culminated in new regulations specifying cleaning and disinfection requirements for foot spas. The results of this issue were published in *The New England Journal of Medicine* describing the unique nature of this complex case (a copy of the article is included in Appendix F).

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Investigation & Experts	\$359,874	\$805,622	\$352,324	\$592,404
Number of Cases Closed	185	163	289	144
Average Cost Per Case	\$1,945	\$4,942	\$1,219	\$4,114
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Prosecution & Hearings	\$374,013	\$554,940	\$495,188	\$566,671
Number of Cases Referred	60	78	87	119
Average Cost Per Case	\$6,234	\$7,115	\$5,692	\$4,762
<b>AVERAGE COST PER DISCIPLINARY CASE</b>	<b>\$2,995</b>	<b>\$5,645</b>	<b>\$2,254</b>	<b>\$4,407</b>

### COST RECOVERY/PROBATION MONITORING

⇒ **The Bureau's efforts in obtaining cost recovery.**

Business and Professions § 7403 allows the Bureau to recover its costs for investigating and adjudicating a case when ordered by an ALJ. The Bureau has recently revised its probation-monitoring program to ensure appropriate follow-up when probationers are not in compliance with the terms and conditions of the decision. In addition, the Bureau has designated a staff person as probation monitor to oversee these activities. Because of this more stringent probation monitoring, the Bureau has been able to increase the amount of cost recovery collected, as indicated in the subsequent table.



Licensees who have had disciplinary action taken against them resulting in revocation of their license with the revocation stayed, generally receive a term of probation ranging from one to five years. The Bureau monitors probationers through random inspections and reporting. In addition to random inspections, the licensee may be required to take remedial education courses directly related to the original cause of discipline. The remedial education courses are monitored by requiring both proof of enrollment and proof of completion of required courses from a Bureau approved school within a specified time frame.

Another condition of probation may be to take and pass the written and/or practical portions of the appropriate licensing examination within a specified time period. The probation monitor arranges repayment of any awarded cost recovery with the licensee through lump sum or monthly payment plans. In the case of a licensee who fails to pay cost recovery, his/her case is referred to the Franchise Tax Board Intercept Program for collection. Failure to comply with one or more of the terms of probation results in further disciplinary action against the probationer. The resulting discipline may include revocation or additional license restrictions or penalties.

During the last review, the Board reported having requested, through the administrative hearing process, an order of approximately \$19,000 in cost recovery each fiscal year and collecting approximately \$12,000 (between 35% and 40% of its enforcement costs). In fiscal year 1998/99, the Bureau collected 60% of the nearly \$70,000 ordered, and in 1999/00 the Bureau collected 63% of the \$59,000 ordered. In 2000/01, the Bureau ordered a much higher amount in cost recovery (nearly \$217,000) due to the boil outbreak occurring in Watsonville, as well as the fraudulent license cases as discussed earlier.

<b>COST RECOVERY DATA</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Enforcement Expenditures	\$733,887	\$1,360,562	\$847,512	\$1,159,075
Potential Cases for Recovery <sup>1</sup>	32	46	86	74
Cases Recovery Ordered <sup>2</sup>	N/A	22	19	65
<b>Amt. of Cost Recovery Ordered</b>	N/A	\$69,862	\$59,260	\$216,674
<b>Amount Collected</b>	\$14,313	\$41,766	\$37,448	\$70,933
<sup>1</sup> The Bureau can only collect cost recovery on Accusations/Petitions to Revoke.				
<sup>2</sup> Total number of disciplinary actions where cost recovery was ordered.				

## RESTITUTION PROVIDED TO CONSUMERS AND THE BUREAU

⇒ **The Bureau's efforts in obtaining restitution for the individual complainant and the types of restitution that the Bureau attempts to collect.**

As outlined in the Bureau's Disciplinary Guidelines and Recommended Penalties, one of the optional terms and conditions that can be included in a decision is restitution for actual damages. An ALJ can include this option in a proposed decision that is issued as a result of an administrative hearing. The licensee can be ordered to pay restitution to any injured party in a specified amount. The amount of restitution and time period in which to comply is based on the facts of the case. Restitution can also be included in stipulated settlements and awarded to consumers as a result of administrative license discipline. Additionally, when a criminal court

orders a licensee to pay restitution to the Bureau, the probation monitor tracks the restitution. The monies are collected by the individual county probation offices and forwarded to the Bureau. The court and/or county probation department sets the monthly payment amounts.

Restitution is not frequently ordered as part of a disciplinary decision. The Bureau began actively tracking restitution data in FY 1998/99. The amount of restitution ordered in FY 2000/01 is significantly higher based on two criminal cases; one involving the theft of an examination from the Fairfield examination site, and the other a result of the prosecution of a fraudulent license ring.

RESTITUTION DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Amount Ordered	Not Available	None	\$35	\$131,066
Amount Collected	Not Available	None	\$35	\$10,781

## COMPLAINT DISCLOSURE POLICY

⇒ **The Bureau's complaint disclosure policy, the point in the disciplinary process when information is made available to the public and the type of information that is available.**

The Bureau discloses complaint and disciplinary action information on licensees. Information regarding disciplinary actions taken by the Bureau may be requested in writing or via the Bureau's website. The Bureau discloses the number of complaints against a licensee, the date the complaint is received by the Bureau, and the disposition of the complaint. The Bureau does not release personal identifying information (i.e., social security number, date of birth, etc.) to the public. Complaints with formal or informal investigations pending are not disclosed to the public until they have been substantiated. However, under extraordinary circumstances, the Bureau may disclose specific information not covered in the current policy (such as the fact that a complaint has been filed, but no investigation has yet been commenced). The Department has established minimum standards for complaint disclosure, which the Bureau will implement in fall 2002.

## INDUSTRY AND CONSUMER OUTREACH & EDUCATION

Over the past two years, the Bureau has significantly increased its industry and consumer outreach and education efforts. Consumers and licensees now have even greater access to information through the Bureau's updated website, consumer fairs, industry trade shows, trade magazines, and Bureau publications. In addition, the Bureau initiated two industry forums that focused on emerging issues in skin and nail care. The Bureau's increased presence allows for an on-going exchange of ideas, issues, and concerns with industry professionals and consumers. These recent efforts have helped establish the Bureau as a resource for industry and consumers. The following is a sampling of some of the outreach efforts that the Bureau conducted in 2001/02.

- ✓ The Bureau held five meetings with the TAC during the 2001/02 fiscal year. These meetings included discussion on emerging technologies (such as nail file disinfection and skin care practices), and change in training curriculum.
- ✓ The Bureau has routinely participated in trade shows throughout California in order to be more accessible to students and licensees and provide education and outreach. The Bureau has participated in ten trade shows during the past fiscal year.
- ✓ The Bureau is active in the National Interstate Council of Boards of Cosmetology (NIC). The Bureau attended the annual NIC conference held in Oklahoma City in 2001 and the Region IV Meeting in Nevada. While attending the conference in Oklahoma City and the meeting in Nevada, the Bureau Chief gave a presentation regarding cleaning and disinfection of whirlpool foot spa disinfection. Further, the Bureau will host an Administrator's meeting in California in fall 2002 to discuss barbering and cosmetology issues. Because of this involvement in the NIC, the Bureau was selected to be the host state for the 2003 NIC National Conference.
- ✓ The Bureau Chief is a member of the Educational Committee for the 2002 NIC Conference scheduled for October 2002 in Hilton Head, South Carolina.
- ✓ The Bureau is an active member of the National Association of Barber Boards and attended their annual conference held in Chicago in September 2001.
- ✓ In July 2001, the Bureau met with school owners to discuss concerns with the pre-application process. As a result of this meeting, the Bureau streamlined the pre-application process through simple, but innovative, changes, making it easier for students to take their examinations in a timely manner.
- ✓ In August 2001, the Bureau participated in a pilot for online licensure of cosmetologists through the Governor's eGovernment project. This project allows cosmetology applicants to apply for the licensing examination and for licensees to renew their licenses online with a credit card. Based on the success of this pilot, all other licensing categories (i.e., barbers, manicurists, electrologists, estheticians, and instructors) were added to online licensing in January 2002.
- ✓ In October 2001, the Bureau and the TAC met with the major manufacturers of nail files and disinfectants who would like the Bureau's rules and regulations to allow the disinfection of nail files. Current Environmental Protection Agency (EPA) guidelines for disinfection of smooth surfaces are cross-referenced in the Bureau's regulations; however, there is no existing EPA standard for the disinfection of rough surfaces like those found on nail files. At the Bureau's suggestion, the nail file manufacturers established a task force to research the issue further. The Task Force is developing a testing protocol working with private laboratories and the EPA to explore the possibility of a national standard for non-smooth surface disinfection. The Bureau continues to monitor this issue.
- ✓ In September 2001, the Bureau hosted open houses for school instructors and administrators at each examination site. These open houses were an opportunity for the schools to meet with Bureau staff and initiate dialogue on issues relevant to their students. The Bureau plans to continue to hold these open houses on an annual basis.

- ✓ The Bureau met with representatives from the barber industry in May 2002 to discuss the possibility that the Bureau could pre-screen barber school applications to determine if a student's prior criminal history would disqualify them from taking the examination. A follow-up meeting was held in July 2002.
- ✓ In May 2002, the Bureau held a public hearing in Sacramento to hear from experts on emerging issues in the rapidly changing skin care field. Presentations from nationally known experts were made to Bureau staff and the Advisory Committee. Recommendations included improving the curriculum and testing and clarifying an esthetician's role and scope of practice when working with a physician. The creation of "medi-spas" and the growing practice of doctors working in salons with estheticians and estheticians working with doctors in their offices, presents a consumer safety concern that estheticians may be working beyond the scope of their practice. The regular introduction by manufacturers of new skin care products is also presenting concerns, which will require more study, and possibly updated regulation, by the Bureau.
- ✓ Beginning June 1999, the Bureau began including administrative disciplinary actions taken against licensees on the website to allow consumers access to this information. This information is also printed in trade publications.
- ✓ In 1998, the Bureau created a *Consumer Guide to Barbering and Cosmetology Services* that was distributed to all licensed salons in the state and made available at trade shows. The *Consumer Guide to Barbering and Cosmetology Services* was also added to the Bureau's website. Included with the guide is a letter requesting that the salons make the guide available to their clients. The letter informs the salons about how to obtain additional guides for distribution to clients.
- ✓ The Bureau's website contains information regarding the licensing requirements in California, allows consumers to look up individuals to determine if they are licensed, provides forms and publications, provides a consumer complaint form to allow consumers to file a complaint online, and has general information about the Bureau. Additionally, the website has been enhanced to include a general e-mail address which consumers and licensees can use to contact the Bureau.

## **PART 2.**

### **RESPONSE TO ISSUES IDENTIFIED AND FORMER RECOMMENDATIONS MADE BY THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

#### **A. General Responsibilities, Duties and Powers of the Bureau**

**ISSUE #1: Should the State continue with the licensing and regulation of barbers, cosmetologists, electrologists, estheticians, manicurists, and their establishments, and cosmetology and barbering instructors, and if not, should some other alternative form of regulation be recommended?**

#### **BUREAU RESPONSE:**

Continuing periodic health and safety issues, such as the Watsonville case discussed on page 2, and the introduction of new tools and chemicals, suggest that continuous regulation of the profession is necessary. The potential for public health problems stemming from unlicensed practitioners could be quite severe. Although most injuries caused during beauty services heal, there are some injuries that can cause permanent injury and/or scarring. In addition, the practice of this profession requires physical contact between licensees and consumers which increases the chance of spreading disease from person to person.

In 1996, the JLSRC recommended that the Board continue to license and regulate the barbering and cosmetology professions because they use potentially dangerous chemicals and procedures. Since then, new, more sophisticated products and techniques, such as skin care practices and other machines, and the use of acids and chemicals, have come into the marketplace. These emerging technologies, combined with the existing use of chemicals, necessitate continued regulation of the industry.

Regulating the profession assures that licensees have the minimum training they need to safely practice. All of the disciplines regulated by the Bureau require the knowledge and understanding of physiology, anatomy, biology, and chemistry. These professions are the only non-medical professions regulated by the Department where licensees come into close contact with and touch their clients while providing hair, skin, and nail services. This is also the only other group of non-medical professions that has the potential for spreading blood-borne diseases, as well as diseases such as bacterial or fungal infections, lice and other skin ailments that can cause physical harm to consumers.

**ISSUE #2: The board only recently defined its mission, goals and objectives for individual programs.**

**BUREAU RESPONSE:**

Since transitioning from a Board to a Bureau, two strategic plans were developed, one in 1999 and one in 2002. The mission of the Bureau is to protect consumers by enforcing educational and professional standards. The Bureau's vision is to set the national standard for consumer protection.

**ISSUE #3: The board has not been involved in any quality management practices as outlined under the Governor's 1993 Executive Order (W-47-93). As of August 14 & 15, 1995, the board engaged in formal strategic planning to improve its overall effectiveness and efficiency.**

**BUREAU RESPONSE:**

Performance-based budgeting, as outlined in the Governor's 1993 Executive Order (W-47-93), was discontinued in 1999.

**ISSUE #4: The board did undertake a performance audit, which was published in August 1995. The auditors found that the board was not fulfilling some of its statutory mandates and also found serious deficiencies in some key areas of its operations and programs. However, it also found some improvements had occurred under the direction of the new executive officer.**

**BUREAU RESPONSE:**

During the 2001/02 fiscal year the DCA Internal Audits Division again conducted a performance review of the Bureau. The audit findings include recommendations identifying performance measures relative to the goals and objectives of the strategic plan. In response to the audit, the Bureau is identifying resource needs to complete the licensing process from receipt of application through evaluation to examination. Additionally, the Bureau implemented changes to its policies and procedures to address processing delays in its complaint and enforcement activities and adopted a revised Investigative Report format recommended by the AG's Office in order to improve the efficiency of case processing and review by the AG (please see Administrative Reforms on page 5 for a more detailed description).

**ISSUE #5: It has been argued that a historical tension exists between barbers and cosmetologists and has, at times, prevented the board from carrying out its legal mandate to protect the consumer.**

**BUREAU RESPONSE:**

This no longer applies since the Board was sunset in 1996. However, the Bureau established an Advisory Committee to provide industry related expertise to the Bureau.

**ISSUE #6: Although the board did finally pass health and safety regulations, the board has not established professional standards of conduct for any of the seven licensing categories it currently regulates. And, although the board argues that it does not have within its statutory guidelines a specific standard to pursue disciplinary action for unprofessional conduct, it has not taken any action, to date, to pursue specific acts of unprofessional conduct by licensees.**

**BUREAU RESPONSE:**

The Bureau recognizes that standards should be developed and referred this issue to its Advisory Committee. In addition, SB 1346 (Senate Committee on Business and Professions, Chapter 758, Statutes of 1997) added unprofessional conduct to the grounds for which disciplinary action may be pursued.

**ISSUE #7: It has been argued that this board has taken no leadership role in other issues related to the occupation it licenses. This includes the well-known practice of “booth rentals”<sup>1</sup> and “gender-based pricing.”**

**BUREAU RESPONSE:**

The Bureau is leading the country on emerging health and safety issues related to foot spas, skin care and manicuring. The Bureau is working closely with tax agencies to educate licensees about tax responsibility. Although the Bureau does not have specific enforcement authority for gender-based pricing, it does respond to complaints from consumers and informs salons of the law relating to gender-based pricing (see page 4 for more discussion on gender-based pricing).

For the past two years, the Bureau has been part of a joint task force with the IRS, FTB, and EDD to assist in increasing awareness in the industry about tax responsibility. Bureau inspectors also work jointly with these agencies, at their request, on joint inspections. During these inspections the Bureau inspects for health and safety violations and unlicensed activity while the other agencies look for evidence relating to tax evasion.

---

<sup>1</sup> During the 2001-2001 Legislative session, the Governor signed AB 2449, (Ch. 316, Statutes of 2002) which requires the Bureau to track the employment status of licensees, including booth-renters. The Bureau will begin tracking employment status in 2003.

**ISSUE #8: The board has not adopted regulations concerning the inspection and operation of tanning facilities in licensed establishments. Nor does it appear that it has taken any action against these facilities for any violations of the Filante Tanning Facility Act of 1988.**

**BUREAU RESPONSE:**

Regulations are not required. The Bureau estimates that only about 300 of the 35,000 licensed establishments contain tanning facilities. When inspecting an establishment containing a tanning facility, the Bureau reviews the tanning facility records and general cleanliness of the establishment. The Bureau has not received any complaints against tanning facilities over the past five years.

**ISSUE #9: The board has not formulated and adopted policies and guidelines for licensed establishments to assure that they are in conformance with the requirements of the Americans with Disabilities Act (ADA).**

**BUREAU RESPONSE:**

The Bureau does not have authority to enforce ADA requirements, nor the expertise to determine compliance.

**B. Funding and Organization of the Bureau and Staff**

**ISSUE #10: The board only spends about 45% of its budget on enforcement activity, and almost 35% on its examination, while other boards spend on average about 66% on enforcement and 7% on their examinations.**

**BUREAU RESPONSE:**

The Bureau spends the majority of its operating budget (43%) on enforcement related activities including inspections, followed by 39% for examination related activities, 10% for licensing functions, and 8% for policy functions. The Bureau's examination costs are higher than other boards and bureaus since the Bureau conducts daily examinations at two fully staffed examination facilities.

**ISSUE #11: The organizational breakdown and workload of the staff appear to focus more on the administration, licensing and examination activities of the board than on the enforcement program.**

**BUREAU RESPONSE:**



The highest proportion of Bureau staff is dedicated to enforcement and inspection activities followed by licensing and policy activities.

**ISSUE #12: Since its formation in 1992, the board has experienced significant turnover in its personnel.**

**BUREAU RESPONSE:**

Since May 2000, the Bureau's staff turnover has been minimal.

**ISSUE #13: Staff has not received appropriate training.**

**BUREAU RESPONSE:**

Staff is given opportunities for training whenever necessary. Additionally, the Bureau regularly solicits staff input on development of policies and procedures, as well as strategic plans.

**ISSUE #14: The board currently has almost six months of budget reserve which is not in compliance with recommendations by the Legislative Analysts Office and the Joint Committee on Legislative Budget, to only maintain three months of budget reserve.**

**BUREAU RESPONSE:**

Over the past six fiscal years, the Bureau's expenditure authority has gradually increased from \$8,679,000 in FY 1997/98 to an estimated \$11,634,000 in FY 2002/03. The increase is due to a more aggressive enforcement program (see page 11 for more discussion on the Bureau's expenditures).

**C. Licensing and Application Process**

**ISSUE #15: It does not appear necessary for the board to approve specified course curriculum of schools of cosmetology and inspect schools for safety and health violations; nor is it necessary for the board to license instructors.**

**BUREAU RESPONSE:**

BPPVE and the Bureau share responsibility for approving school curricula, and work collaboratively when approving curricula. Since BPPVE gained jurisdiction over barbering and cosmetology schools, it has continued to rely on the Bureau's technical expertise when approving curriculum.

Instructors who teach in private barbering and cosmetology schools are not required to hold a license issued by the Bureau. However, some individuals who wish to demonstrate increased competency may seek licensure as an instructor. In addition, an instructor's license is required by public schools. The statutory provisions for the licensing of instructors (B&P §§7390 – 7395) were originally scheduled to sunset on July 1, 2001. SB 2239 (Senate Committee on Business and Professions, Chapter 878, Statutes of 1998), repealed the sunset dates.

**ISSUE #16: The number of hours and curricula required by the board in a cosmetology and/or barbering school (up to 1600 hours) appears to be an artificial barrier to entering into these professions, and there is no evidence provided which justifies the need for such lengthy training in these particular areas of specialty.**

**BUREAU RESPONSE:**

One of the most effective means of determining appropriate training is through the occupational analysis process. The Bureau is in the process of conducting occupational analyses for each of its licensing categories. The Bureau anticipates completing each occupational analysis by 2004.

**ISSUE #17: The board has not complied with the requirement that license renewal applications provide information on whether the licensee is currently employed in the occupation for which they are licensed.**

**BUREAU RESPONSE:**

The Bureau is in the process of revising its forms, including the license renewal form. Additionally, AB 2449 (Correa, 2002) would require the Bureau to collect statistical data on employment in the industry.

**ISSUE #18: The board has not complied with the requirement that it utilize a photograph of the licensee to verify licensure status.**

**BUREAU RESPONSE:**

In 1996, SB 1077 (Greene, Chapter 1137, Statutes of 1996) repealed the requirement that licenses contain a photograph of the licensee. Although the Bureau still intends to implement photographic licensure, the requirement that licenses be issued to candidates on the date of the examination has impeded the progress. The Bureau is examining ways to implement photographic licensure as part of the Bureau's move to computer based testing.

**ISSUE #19: The board maintains inadequate security over licenses which it issues.**

## **BUREAU RESPONSE:**

Current regulations require the Bureau to issue licenses to passing examination candidates the same day they are examined. In 2000, the Bureau requested an audit of the same day licensing process by the Department's Office of Internal Audits.

In response to the audit, the Bureau initiated a rulemaking to repeal the same day license requirement. However, the Bureau withdrew the regulations to provide time for additional discussion. This issue is discussed in more detail on page 3 of this report.

## **D. Examination Process**

**ISSUE #20: There is little evidence provided that a licensing examination is necessary for any of the seven licensing occupations.**

## **BUREAU RESPONSE:**

The written and practical licensing examinations are designed to measure minimum competency. The examinations assess skills that are pertinent to the profession. Licensing examinations are developed by the Department's Office of Examination Resources based on the respective Occupational Analyses.

**ISSUE #21: There have been substantial delays in providing the exam to candidates for licensure and this may have caused them to miss certain employment opportunities.**

## **BUREAU RESPONSE:**

The growing demand and the increased use of the pre-application process by students has created a situation where individuals who are retaking one or both portions of the exam, and individuals from other states and other countries, must wait as long as four to six months before being scheduled or re-scheduled for their examination (see discussion on page 15).

The Bureau is in the process of relocating its Southern California testing facility in order to obtain more space. The move to a new site, which has been attempted several times since the early 1990s, should help relieve some of the backlog. In addition, the Bureau is actively working with the Department's Office of Examination Resources to develop a plan to provide computer based testing for the written portion of the exam, which will greatly reduce the wait time for retaking the written portion of the examination.

**ISSUE #22: There has been a serious problem with cheating on the written licensure examination because of the need to use interpreters during the written examination.**

## **BUREAU RESPONSE:**

Interpreter/candidate cheating on the written examination remains a problem. All exams using an interpreter are tape-recorded and when cheating is suspected, cases are forwarded to the Attorney General's Office for action. In FY 2000/2001, 60 cases were forwarded to the AG for action.

## **E. Continuing Education and Review of Professional Competence**

**ISSUE #23: The board requires continuing education for barber and cosmetology instructors, but no evidence is provided of the quality and effectiveness of these programs, or that the continuing education improves the competency of instructors.**

## **BUREAU RESPONSE:**

Currently, barbering and cosmetology instructors must take 30 continuing education units every two years. The intent is to ensure that licensed instructors remain current on changes in the law and in the industry.

## **F. Complaint Process**

**ISSUE #24: There are very few complaints filed against the 400,000 licensees of the board (only 2,000 to 3,000 complaints per year over the past three years), of which, only about 130 per year were considered serious enough to require formal investigation. Most of the complaints filed were for unlicensed activity or minor health and safety violations, and consumers filed less than one-third of all complaints.**

## **BUREAU RESPONSE:**

Complaint data remains consistent with the data reported during the prior review. Between 2,000 and 3,500 complaints are filed annually, with an average of 43% of complaints filed by consumers. An average of 166 complaints annually requires formal investigation.

**ISSUE #25: The board is attempting to improve its enforcement program so complaints can be handled in a more expeditious and efficient manner.**

## **BUREAU RESPONSE:**

Over the last fiscal year, the Bureau increased its enforcement efforts through the number of administrative actions taken against licensees, which were the result of disciplinary cases transmitted to the Attorney General. From FY 1999/00 to FY 2000/01, license revocation

increased from 11 to 51 (460%), probation with suspension from 17 to 39 (229%), and license surrender from 2 to 10 (500%).

## **G. Enforcement Process**

### **Cite and Fine - Unlicensed Activity**

**ISSUE #26: The board is still in the process of developing a citation and fine program to address unlicensed activity. The board believed that it only had jurisdiction over licensed individuals and licensed establishments, but finally sought clarification from the Department's legal office in 1995. It is unknown when the board will finally implement a cite and fine for unlicensed activity.**

#### **BUREAU RESPONSE:**

In January 1997, the Bureau amended the fine schedule and implemented a cite and fine program to address unlicensed activity.

### **Cite and Fine - Licensed Activity**

**ISSUE #27: The board only began using its cite and fine authority against licensed individuals and establishments on December 1, 1994, even though authority has existed since July 1, 1992, and then had to withdraw all citations issued and abate all fines assessed from December 1, 1994, to March 20, 1995, because health and safety regulations had not been previously mailed to all licensees.**

#### **BUREAU RESPONSE:**

There are no longer any concerns with this issue, and revisions to the rules and regulations are provided to licensees.

## **Inspections**

**ISSUE #28: The board is currently unable to meet its legal mandate to conduct inspections of all establishments within 90 days after issuance of a license, and annually thereafter to assure compliance with applicable laws and regulations governing the public health, safety and safe operation of establishments.**

#### **BUREAU RESPONSE:**

Similar to all state programs facing resource constraints, the Bureau had to prioritize the deployment of its inspectors. The inspectors focus on responding to complaints relating directly to consumer harm and multiple health and safety violations. With the current number of inspectors, the Bureau is limited in its ability to meet the 90 day mandate to inspect new establishments. Legislation (SB 1077, Chapter 1137, Statutes of 1996), enacted subsequent to

the prior sunset review, repealed the requirement that the Bureau inspect each establishment annually.

**ISSUE #29: Most of the inspection violations issued (over 70%) were for improper use of (or lack of) disinfection procedures (usually for equipment and instruments) and unsanitary conditions (such as failure to wash hands or not using neckstrip/towel to protect client).**

**BUREAU RESPONSE:**

In 2000/01 fiscal year, the Bureau worked with local government officials in resolving serious health and safety violations regarding the cleaning and disinfection of whirlpool foot spas. The Bureau adopted regulations for the cleaning and disinfection of whirlpool foot spas. Currently, California is the only state that has adopted regulations addressing this issue.

Violations for improper disinfection continue to be a problem. To address this issue, the Bureau implemented a pilot remedial education course in June 2002 to provide specific instruction on health and safety rules and disinfection procedures (see violations statistics on page 20).

### **Investigations**

**ISSUE #30: The board has had few investigations over the past three years, and about 50% of those cases involved unlicensed activity in establishments.**

**BUREAU RESPONSE:**

In FY 2000/01, the number of investigations commenced and cases referred for criminal action decreased. In 2001, DOI revised its investigation criteria to only accept cases that present or indicate an immediate or irreparable physical or mental harm to the public. Due to resource constraints, DOI will only investigate complaints that allege consumer harm, sexual misconduct and fraudulent activity (see enforcement case data on page 17)

**ISSUE #31: There have been substantial delays in completing investigations.**

**BUREAU RESPONSE:**

Depending on the nature and complexity, cases can be resolved in as little as thirty days or take as long as two years. Generally, cases referred to DOI or the AG take the most time. The Bureau works cooperatively with both the DOI and the AG who have multiple priorities and limited resources.

## **Disciplinary Action**

**ISSUE #32: The board has taken little disciplinary action against licensees over the past three years for incompetence or gross negligence.**

### **BUREAU RESPONSE:**

The Bureau receives relatively few complaints against licensees for incompetence or gross negligence. The Bureau takes disciplinary action as appropriate regardless of the nature of the complaint.

## **Enforcement Costs**

**ISSUE #33: The board's expenditure for all enforcement costs is below the average for other consumer boards.**

### **BUREAU RESPONSE:**

The Bureau spends 43% of its budget on enforcement related activities including inspections, followed by 39% for examination related activities, 10% for licensing functions, and 8% for policy-related functions. The Bureau's testing costs are higher than other boards and bureaus due to the fact that administering the practical examination requires that the Bureau maintain and staff exam facilities. In addition, the Bureau administers examinations every day while most other boards and bureaus only test quarterly.

**ISSUE #34: The board has made little use of its cost recovery authority under § 125.3 of the Business and Professions Code.**

### **BUREAU RESPONSE:**

During the last review, the Board reported having ordered approximately \$19,000 in cost recovery each fiscal year and collecting approximately \$12,000, or between 35% and 40% of its enforcement costs. In fiscal year 1998/99, the Bureau collected 60% of the nearly \$70,000 ordered, and in 1999/00 the Bureau collected 63% of the \$59,000 ordered. In 2000/01, the Bureau ordered a much higher amount in cost recovery (nearly \$217,000) due to the boil outbreak in Watsonville as well as from the discovery of a fraudulent license cases.

## **H. Efforts to Improve the Current Regulatory Process**

**ISSUE #35: The board's prior administrative, regulatory and legislative efforts have only minimally improved its operation and increased its ability to operate more in the public interest.**

**BUREAU RESPONSE:**

Under this administration, the focus of the Bureau has been entirely on consumer protection. For example, the Bureau adopted regulations regarding the cleaning and disinfection of whirlpool foot spas, provided a pilot health and safety remedial class, hosted two forums (skin and nail care), and sponsored SB 1957 which gives the Bureau the authority to close an establishment immediately for serious health and safety violations.

**ISSUE #36: The board's proposed administrative, regulatory and legislative changes do address some of the basic problems, which are identified in this report.**

**BUREAU RESPONSE:**

As indicated in the responses above, the Bureau has developed a strategic plan, assumed a leadership position on several emerging industry issues, established an Advisory Committee to provide industry related expertise, adopted consumer protection regulations such as the cleaning and disinfection of whirlpool foot spas, and increased its focus on enforcement and inspection activities.



### **3.**

## **BACKGROUND PAPER FOR HEARING**

### **IDENTIFIED ISSUES, QUESTIONS FOR THE BUREAU, AND BACKGROUND CONCERNING ISSUES**

The Bureau of Barbering and Cosmetology (Bureau) licenses barbers, cosmetologists, electrologists, estheticians, and manicurists after determining through an examination that applicants possess the minimum skills and qualifications necessary to provide safe and effective services to the public. The Bureau's mission is to protect consumers from harm by licensees through its licensing and enforcement programs. Currently, the Bureau has an annual budget of approximately \$11 million with 74 permanent full-time staff and 51 permanent-intermittent and temporary employees (students and seasonal clerks) for a total of 125 positions. Examinations are administered on a daily basis at two examination facilities, one in Fairfield and the other in Los Angeles. The Bureau administers approximately 23,000 examinations a year. The Bureau regulates nearly 420,000 licensees, including 242,000 cosmetologists, 91,000 manicurists, 21,000 barbers, 19,000 estheticians, and 3,300 electrologists, and 37,000 establishments. There are 15 inspector positions, 12 enforcement positions, 27 licensing positions, 11 positions in administrative support and policy, 25 examination staff in the south and 22 in the north. There are currently 206 barbering and cosmetology schools approved by the Bureau and licensed by the Bureau of Post Secondary and Vocational Education (BPPVE).

The Board of Barbering and Cosmetology (Board) was created in 1992 after the passage of enabling legislation (AB 3008, Chapter 1672, Statutes of 1990) that merged the Board of Barber Examiners and the Board of Cosmetology, both of which were established in 1939. The merged Board consisted of five public members and four members representing the professions. The Governor appointed three of the public members and four professional members. The Senate Committee on Rules and the Speaker of the Assembly each appointed one public member.

In 1996, the Joint Legislative Sunset Review Committee (Joint Committee) recommended that the Board be eliminated. Like all boards in the Department of Consumer Affairs (Department), the Board functioned semi-autonomously. Once the Board was sunset, all of its functions, duties and powers were transferred to the Director of the Department. The result was the creation of the Barbering and Cosmetology Program in 1997, which was led by a Program Administrator, appointed by the Department Director. The Program experienced another change in 1999, when Senate Bill 1306 (Senate Committee on Business and Professions, Chapter 656, Statutes of 1999) changed the Program's name to the Bureau, and required the Bureau be subject to sunset reviews.

SB 1482, a measure to recreate the Board, was passed by the Legislature in August 2002 and signed by the Governor in September 2002.

On September 4, 2002, the Bureau submitted a draft sunset report to the Joint Committee. This is the first time that the Joint Committee has reviewed the Bureau. The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff have asked concerning the particular issue. The Bureau was provided with these issues and questions and is prepared to address each one if necessary.

## CURRENT SUNSET REVIEW ISSUES

### **BUREAU POWERS & ENFORCEMENT ISSUES**

**ISSUE #1:** The Bureau's authority to inspect licensed establishments is unclear. The Bureau does not have the authority to close an establishment for unlicensed activity. The Bureau does not have the authority to confiscate items being used illegally by licensees.

**Question #1 for the Bureau:** *What authority does the Bureau have to inspect licensed establishments? Are these unannounced visits? Are these visits conducted prior to or after the issuance of a license? What exactly does the Bureau inspect? Are these inspections conducted with some regularity? Does the Bureau have authority to discipline an establishment for violations? Does the Bureau have sufficient staff and funds to perform these inspections? What type of harm can be caused by unlicensed activity to justify the closure of an establishment? What type of items would the Bureau confiscate?*

**Background:** There are approximately 37,000 licensed establishments. Section 7313 of the Business and Professions Code provides that to ensure compliance with the Barbering and Cosmetology Act (Act), the Bureau shall have access to, and shall inspect, any establishment or mobile unit at any time in which barbering, cosmetology, or electrolysis is being performed.

Additionally, section 7313 provides that the Bureau shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The Bureau shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement.

However, the Act is not clear as to whether a patron must be receiving services in order for an inspection to occur.

Section 7353 of the Business and Professions Code provides that within 90 days after issuance of the establishment license, the Bureau or its agents or assistants shall inspect the establishment for compliance with the Act and the applicable rules and regulations of the Bureau. The Bureau is required to maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. It is unclear whether the Bureau complies with Section 7353.

**ISSUE #2: The extent to which the Bureau can and does inspect schools is unclear.**

**Question #2 for the Bureau:** *Does the Bureau know of any schools that do not practice on members of the public? Does the Bureau have the authority to assess a fee to conduct these inspections? Are these unannounced visits? Does this apply to both public and private schools? What exactly does the Bureau inspect? Are these inspections conducted with some regularity? Does the Bureau have sufficient staff and funds to perform these inspections? Does the Bureau have clear authority to discipline a school for violations? Does the Bureau's authority extend to schools that teach nail care and esthetics?*

**Background:** There are currently 206 barbering and cosmetology schools approved by the Bureau and licensed by the BPPVE. Section 7313 of the Business and Professions Code provides that to ensure compliance with the Bureau's health and safety requirements, the Bureau shall have access to, and shall inspect the premises of all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public.

According to the Bureau's current report to the Joint Committee, since 2000, 163 school inspections have occurred resulting in the discovery of over 800 health and safety violations and failure to meet minimum equipment standards.

**ISSUE #3: The Bureau has no authority to issue citations with administrative fines at the time of school inspections.**

**Question #3 for the Bureau:** *Could/would allowing for the issuance of administrative fines at the time of inspection benefit both consumers and students? Would this authority be limited to private schools?*

**Background:** Section 7313 of the Business and Professions Code generally provides that notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. If corrections have not been made within 30 days, an inspector may issue a citation with administrative fines.

**ISSUE #4: The fine amounts may not be high enough to deter illegal activity and unprofessional conduct. Even though violations can exceed \$2,500, the Bureau cannot assess fines exceeding that amount.**

**Question #4 for the Bureau:** *Does the existing fine structure act as a sufficient deterrent?*

**Background:** The Cite and Fine program was initiated in December 1994. Administrative citations are issued for violation of the Bureau's rules and regulations, primarily related to health and safety issues. Violations range from improper disinfection to unlicensed activity, with fines ranging from \$25 to \$500 for first violations. Most fines are waivable on the first offense, provided the offense is corrected within 30 days. The fine amounts increase for second and third

offenses. Fines levied against operators are also levied against establishment owners, since establishment owners are responsible for all activities in their establishment.

**ISSUE #5:** Applicants are not required to submit fingerprint cards for background investigations. It is unclear why applicants of other bureaus and boards are required to submit fingerprint cards for background investigations and not Bureau of Barbering and Cosmetology applicants.

**Question #5 for the Bureau:** *How many applicants has the Bureau found have made misrepresentations on their application? Would fingerprinting better protect consumers; if so, how?*

**Background:** Section 144(a) of the Business and Professions Code provides that notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation. Section 144(b) of the Business and Professions Code provides that section 144(a) applies to a number of the boards and bureaus but does not apply to the Bureau.

**ISSUE #6:** Photographic licensure was previously required but never implemented. Should photographic licensure be required?

**Question #6 for the Bureau:** *Would photographic licensure better protect consumers? If so, how? Would photographic licensing assist the Bureau in their enforcement efforts? If so, how? Should photographic licensing be required of existing licensees? If so, how could it be accomplished?*

**Background:** AB 3008 (Eastin, Chapter 1672, Statutes 1990) required licenses to contain a photograph of the licensee. This measure allowed the Board to establish the method or methods it deemed appropriate for utilizing a photograph of the licensee to verify licensure status, and charge an additional fee for the processing of the photographic license.

During the prior review, the Joint Committee noted that the Board failed to take the necessary actions to implement this requirement which went into effect on July 1, 1992. According to a chronology of the photographic license project presented to the Joint Committee it would appear as though the Board and former executive officer did not complete the request for proposal in a timely fashion, and ignored recommendations from staff and the Department of Finance to pursue the request for proposal immediately. Because of this, the \$1.9 million appropriation for this project reverted to the Board's fund reserve and the Board was required to submit a budget change proposal for one-time funding in FY 1995/96. The requirement that licenses contain a photograph of the licensee was ultimately repealed in 1996 (SB 1077, Greene, Chapter 1137, Statutes of 1996).

## BUDGETARY ISSUE

**ISSUE #7:** The Bureau spends more on its examination program than it makes.

**Question #7 for the Bureau:** *Does the Bureau assess actual costs for its exams? What options has the Bureau considered to reduce its exam expenditures?*

**Background:** The Bureau's current report to the Joint Committee states that they collect approximately \$900,000 in examination fees while they annually spend \$3,419,285 (37.4%) on their examination program and \$2,227,610 (22.9%) on their enforcement program.

Pursuant to section 7423 of the Business and Professions Code applicants for individual practice (cosmetologist, esthetician, manicurist, barber, electrologist) pay one amount (ranging from \$35 to \$50) that covers the application, examination, and initial license fees.

## LICENSURE ISSUES

**ISSUE #8:** The law does not allow reciprocity for any of the Bureau's licensing categories.

**Question #8 for the Bureau:** *Would/could allowing reciprocity for applicants licensed (in good standing) in other states, under similar standards, pose any risk to California's consumers?*

**Background:** California does not have reciprocity with any other state. Individuals from other states and countries must meet eligibility requirements and take and pass both a written and practical examination, regardless of years of experience in other states or countries.

**ISSUE #9:** The law establishes a process whereby barbering instructors and cosmetology instructors can voluntarily obtain a license from the Bureau. If licensed as such, the instructor must complete continuing education requirements to renew the license. The necessity of a voluntary license for barbering instructors and cosmetology instructors is unclear. The necessity of requiring continuing education for instructors is unclear.

**Question #9 for the Bureau:** *Is the Bureau aware of any similar requirement for other instructors of professional students; do any other board/bureaus provide voluntary licenses? Is the issuance of a voluntary license to instructors necessary to protect students and consumers? Is the mandate for licensed instructors to complete continuing education courses necessary to protect students and consumers? Is this or could this be done as part of the school approval process? Does the Bureau have authority to audit licensees to ensure compliance with the continuing education requirements? If so, what is the extent and frequency? How does the Bureau ensure the effectiveness and quality of the courses?*

**Background:** The law does not require but rather establishes a process whereby an individual can obtain a barbering or a cosmetology instructor's license. Pursuant to section 7391 Business and Professions Code an individual can sit for the instructor examinations (written and practical) provided that they (a) have completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent; (b) are not subject to denial pursuant to Section 480; (c) hold a valid license to practice cosmetology or barbering in this state; and, (d) have done at least one of the following: (1) completed a 600 hour cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state; (2) completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the bureau; or, (3) practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state.

Pursuant to section 7392 of the Business and Professions Code, in order to renew an instructor's license an individual must complete at least 30 hours of continuing education in the teaching of vocational education. This section provides that programs designed for continuing education in the teaching of vocational education may include, but not be limited to, development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

Section 7395 of the Business and Professions Code provides that if an instructor with an active license status does not provide proof of compliance with the continuing education requirements within 45 days of a request from the Bureau, the instructor's license shall revert to inactive status until proof of compliance is provided to the Bureau.

**ISSUE #10:** The reasons for the dramatic curriculum differences between apprenticeship applicants and school applicants are unclear; the curriculum requirements are 3200 hours regardless of the apprenticeship type. It is unclear whether the Bureau has sufficient authority and/or resources to oversee the apprenticeship program.

**Question #10 for the Bureau:** *When is the last time the Bureau reviewed the apprenticeship curriculum requirements? When is the last time the Bureau reviewed the standards for pre-apprentice trainers; program sponsors; trainers; and the establishments where apprentices will be placed? What quality control measures has the Bureau implemented in order to ensure actual and meaningful compliance with the apprenticeship requirements? Could apprentices be exempted from the practical exam under the right circumstances?*

**Background:** There are different licensing pathways in which an individual may qualify for the examination. An individual may qualify through training in an approved school, previous licensure in California, experience and/or training in another state or country, or through the apprenticeship program.

If an individual chooses to take the apprenticeship pathway, he/she applies to the Bureau for an apprentice license and provides proof that he/she has completed a minimum number of

pretraining hours at a facility approved by the Bureau. After obtaining an apprentice license, the individual trains in licensed establishments under the supervision of a licensee approved by the Bureau.

Section 7335 of the Business and Professions Code provides that a person may maintain an apprentice license for a period of 2 years and allows the Bureau to extend the two-year period if a licensee shows good cause. Section 7335 specifies that no person having an apprentice license shall work more than three months after completing the required training.

Pursuant to Bureau regulations, all apprentice training is set at a minimum of 3,200 clock hours. In comparison, students enrolled in a cosmetology course must complete 1,600 clock hours, students enrolled in a barbering course must complete 1,500 clock hours, students enrolled in a skin care course must complete 600 clock hours, students enrolled in a nail care course must complete 400 clock hours, and students enrolled in an electrolysis course must complete 400 clock hours.

**ISSUE #11:** The externship program is only available to cosmetology students attending private schools. While the externs receive school course credit, they are unpaid. It is unclear whether the schools or the Bureau have sufficient authority and/or resources to oversee the externship program.

**Question #11 for the Bureau:** *What quality control measures has the Bureau implemented in order to ensure actual and meaningful compliance with the externship requirements? Why is this program necessary in light of the practical training students are required to receive at school? What type of work are the students doing? Why is this only available to cosmetology students from private schools?*

**Background:** Section 7395.1 of the Business and Professions Code provides that a student who is enrolled in a school of cosmetology approved by the BPPVE in a course approved by the Bureau may, upon completion of a minimum of 60% of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology. Externs shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10% of the total clock hours required for completion of the course.

Section 7395.1 provides that the externship program shall be conducted in licensed cosmetology establishments meeting all of the following criteria: (1) the establishment has a minimum of four licensees working at the establishment, including employees and owners or managers; (2) all licensees at the establishment are in good standing with the Bureau; (3) licensees working at the establishment work for salaries or commissions rather than on a space rental basis; (4) no more than one extern shall work in an establishment for every four licensees working in the establishment; and, (5) externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification card, that includes a picture, in a form approved by the Bureau.

Pursuant to Section 7395.1, a school participating in the externship program shall provide the participating establishment and the extern with a syllabus. The extern, the school, and the establishment shall agree to the terms of and sign the syllabus prior to the extern beginning work at the establishment. No less than 90% of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology. The establishment is required to consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment is required to monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees. A participating school is required to assess the extern's learning outcome from the externship program. The school is required to maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

**ISSUE #12: It is unclear what the relationship is between the Bureau and the BPPVE relative to approval and oversight of schools.**

**Question #12 for the Bureau:** *What functions does the Bureau perform as opposed to the BPPVE? Is there a way to streamline the school approval process? Is there a national accrediting body that can be used for part or all of the school approval process not currently provided by either of the two Bureaus?*

**Background:** Section 7395.1 of the Business and Professions Code provides that a school approved by the Bureau is one which is licensed by the BPPVE, or a public school in this state, and provides a course of instruction approved by the Bureau. Section 7395.1 provides that the Bureau shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons.

**ISSUE #13: There are problems associated with same day licensing.**

**Question #13 for the Bureau:** *What are some of the problems that the Bureau is experiencing with same day licensing? Is exam site security a concern? If so, what actions have or could be taken to make the sites more secure? If same day licensing were eliminated, what has or could be done to ensure that licenses were issued within a reasonable timeframe? Would this issue change if the national exam were adopted or computer based testing were used?*

**Background:** Current regulations require the Bureau to issue licenses to passing examination candidates the same day they are examined. The Bureau is the only regulatory body under the Department to issue licenses to candidates on the day of the examination. According to the Bureau's current report to the Joint Committee, to meet this requirement, approximately 23,000 licenses a year are pre-printed and sent weekly by courier from the Employment Development Department printing plant to the two examination sites. Of these licenses, less than 50% are



issued and the remainder must be shipped back to Bureau headquarters, audited, voided, and destroyed, requiring additional staff time and resources. This weekly transfer and destruction of pre-printed licenses is not only costly, but also presents a significant security risk by increasing the opportunity for theft, loss and fraudulent use.

In the 1996 Sunset Review, the Joint Committee commented on the Board's failure to maintain adequate security over the licenses issued at the exam sites. Additionally, 239 Bureau licenses were misplaced and believed to have been lost in transit in September 2000. Although they were subsequently recovered, the loss of these licenses and the earlier concerns from the Joint Committee prompted the Bureau to request an audit of the licensing process by the Department's Office of Internal Audits. The Internal Audit report made several recommendations, including that the Bureau should determine if there are viable alternatives to the same day licensing process.

According to the Bureau's current report to the Joint Committee, in response to the audit, the Bureau initiated emergency rulemaking to repeal the same day license requirement and instead require the Bureau to issue licenses within 15 working days. The Bureau held a public hearing and took comments from industry members who expressed concerns that eliminating same day licensing would delay a licensee's ability to go to work the next day. The Bureau addressed these concerns by revising the proposed regulations to require the issuance of licenses within 10 working days, and by developing a plan to allow candidates to use the Internet and/or toll-free telephone system to obtain their results no later than the next morning. This would allow licensees to work before receipt of their paper license. The Bureau completed the rulemaking process and submitted the regulations to the Office of Administrative Law for final review. However, due to concerns expressed by the Senate Budget Subcommittee No. 4 and opposition by certain industry segments, the Bureau withdrew the regulations to provide time for additional discussion. Subsequently, the Legislature added language to the 2002/03 State budget that said, "The license shall be issued by the bureau on the same day that the applicant satisfactorily passes the examination."

**ISSUE #14:** During the last review the Joint Committee felt that the number of hours and the curricula required in cosmetology and/or barbering school was an artificial barrier to entering the profession and no evidence existed to justify the need for such lengthy training in these areas of specialty.

**Question #14 for the Bureau:** *Has the Bureau reviewed the licensing standards for their licensing categories to determine whether they create an artificial barrier to entry?*

**Background:** In their current report to the Joint Committee, the Bureau states that one of the most effective means of determining appropriate training is through the occupational analysis process. The Bureau is in the process of conducting occupational analyses for each of its licensing categories. The Bureau anticipates completing each occupational analysis by 2004.

## **EXAMINATION ISSUES**

**ISSUE #15:** The Bureau creates, updates and administers its own exams (written and practical) when national exams exist.

**Question #15 for the Bureau:** *Does the Bureau know whether any of the exams for any of their licensing categories are comparable to the exams administered by the National-Interstate Council of State Boards of Cosmetology, Inc. (NIC)? Does the Bureau know whether any of the national exams could properly determine minimum competency? Would/could California consumers be at risk if the national exams were used?*

**Background:** NIC offers both practical and written exams. One or more NIC tests are used in 32 states.

**ISSUE #16:** Individuals who do not use, or do not qualify to use, the preapplication process typically have to wait five months to be scheduled to take the exams. Applicants should be able to take their examinations within a reasonable time after submitting proof to the Bureau that they have graduated.

**Question #16 for the Bureau:** *What is the Bureau doing (could the Bureau do) to decrease the waiting time? Does the Bureau feel that computer based testing will decrease the waiting time? Does the Bureau know if, or believe that, using the national exam would decrease the waiting time? Does the Bureau know if, or believe that, eliminating the practical exam would decrease the waiting time? Does the Bureau know if, or believe that, any of the above options would put consumers at risk?*

**Background:** Barbering, cosmetology, and electrology students may pre-apply for their examination after completing 75% of their required course hours and curriculum. Manicuring and esthetician students may pre-apply after completing 60% of the required hours and coursework. Effective

January 1, 2003, apprentices who have completed 75% of their training. Students indicate their anticipated date of graduation on their application and pay a \$9.00 processing fee in addition to the regular application fee. These students are then scheduled into examination slots that have been set aside for pre-application candidates. By law, the Bureau must examine pre-application candidates within 10 working days of their graduation date.

The pre-application program was created through legislation (SB 985, Chapter 1015, Statutes of 1991), and became effective in 1992. The pre-application program was created to benefit the top students by ensuring that they received an examination date shortly after graduation. Schools were concerned because some students were waiting approximately 16 to 20 weeks for an examination date due to the high volume of applications. However, the popularity of the program has increased and modifications may be needed to accommodate the increase in pre-application candidates.

Applicants who cannot use the pre-application process, including licensees from other states and countries and those who are retaking the test (there is an overall failure rate of over 30%), must wait as long as 20 weeks to be scheduled or re-scheduled for the exam. Even though the Bureau overbooks the sites, yet increasing demand for a fixed number of spaces is creating a long waiting time for non-pre-application candidates. A larger testing facility in Southern California could relieve some of the testing pressure and will lower, but not eliminate, wait times for non-pre-application candidates.

**ISSUE #17: What is the value of the written exam for barbers when the low passage rate (6%) does not keep them from being licensed because of aggregate scoring?**

**Question #17 for the Bureau:** *Is this form of scoring valid?*

**Background:** California provides a two-part licensing examination that consists of a written portion and a practical portion. Both parts of the examination are taken on the same day and results are issued after completion of the examination. The written portion of the examination tests the candidate's general knowledge of the Bureau's health and safety laws and regulations. The practical portion of the examination tests the candidate's actual minimum competency in performing the required services for that licensing category.

The required passing grade for all examinations is 75%. Except for the barber examination, all candidates must pass the written portion of the exam and the practical portion of the exam separately. Cosmetology, manicuring, esthetics and electrology candidates must achieve 300 points overall (out of a possible 400 points), including a score of 225 on the practical portion of the examination, and 70 on the written portion. In order to achieve the 300 overall points, the candidates must earn the additional five points in either portion of the examination. Barber candidates achieve a passing grade if the combined total points from the written and practical portions of the examination total 75 of 100.

For barber exams taken during FY 1999/2000, the passage rate for the practical exam was 90% and 6% for the written exam. In comparison, during this same time period, for cosmetology exams, the passage rate for the practical exam was 75% and 67% for the written exam.

For barber exams taken during FY 2000/2001, the passage rate for the practical exam was 89% and 6% for the written exam. In comparison, during this same time period, for cosmetology exams, the passage rate for the practical exam was 71% and 70% for the written exam.

**ISSUE #18: During the last review, the Joint Committee was concerned about the connection between the use of interpreters and cheating on the written examinations. It appears that this is still a problem.**

**Question #18 for the Bureau:** *What has the Bureau done or what could the Bureau do to curb this problem?*

**Background:** During the prior review, the Joint Committee found that there was a serious problem with cheating on the written examination because of the need to use interpreters during the written examination. The Board allowed non-English speaking applicants to bring their own interpreters to the written and practical examinations. This practice resulted in the Board's examination being subverted and has exposed non-English speaking applicants to unscrupulous interpreters who charge exorbitant fees for their services (\$500 to \$1000). For example, statistics maintained from January 1995 through July 1995 illustrate that the Board experiences an average of 30 to 50 cheaters per month (a total of 289 incidents of cheating during this period).

One solution that the Joint Committee noted was to administer the written examination electronically by a qualified outside vendor. This would enable the Board to offer the written examination in Spanish and Vietnamese (via electronic translation), thus eliminating much of the need for interpreters for the written portion of the exam.

According to the Bureau's current report to the Joint Committee, interpreter/candidate cheating on the written exam remains a problem. All exams using an interpreter are tape-recorded and when cheating is suspected, cases are forwarded to the Attorney General Office for action. In FY 2000/2001, 60 cases were forwarded to the Attorney General Office for action.

## 4.

### **FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS**

**The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on April 7, 2003 by a Vote of 6 to 0:**

**ISSUE #1:** (AUTHORIZE THE BOARD TO ISSUE CITATIONS AND FINES AT THE TIME OF SCHOOL INSPECTIONS AND CLARIFY THE BOARD'S AUTHORITY TO INSPECT ESTABLISHMENTS?) The Board does not have the authority to issue citations and administrative fines at the time of a school inspection. The Board does not have the authority to close an establishment for unlicensed activity. The Board does not have the authority to confiscate items being used illegally by licensees.

**Recommendation #1:** *The Joint Committee and the Department recommend that the Board be given clear authority to inspect establishments and issue citations with administrative fines at the time of a school inspection.*

**Comments:** The Department recommends that the Board should be given authority to inspect establishments and that Board inspectors should be authorized to issue citations and fines to schools that are providing services to the public, consistent with the requirement in existing law.

**ISSUE #2:** (REVIEW AND REVISE FINE STRUCTURE?) The fine amounts may not be high enough to deter illegal activity and unprofessional conduct. Even though violations can exceed \$2,500, the Board cannot assess fines exceeding that amount. The Board and the BPPVE may have issued fines for the same violation.

**Recommendation #2:** *The Joint Committee and the Department recommend that the Board review and revise the existing fine structure and promulgate regulations to revise it. The Board should also take steps to ensure that they and the BPPVE are not issuing citations for the same violations.*

**Comments:** A key component of the Board's ability to regulate the public is their authority to issue citations and fines for violations of the practice act. Although the cite and fine program was established in 1994, the fine amounts have not been updated since that time. Fines may be too low to serve as a deterrent to licensees who are violating the law. At the Department's public

hearing, concerns were raised that some licensees are not responsive to the threat of a citation and a fine, due to the low cost of the fines levied. If fines are considered a “cost of doing business” they may lose their deterrent affect.

**ISSUE #3: (IMPLEMENT PHOTOGRAPHIC LICENSURE AND STREAMLINE EXAMINATION PROCESSES?)** Photographic licensure was previously required but never implemented. Individuals who do not use, or do not qualify to use, the preapplication process typically have to wait five months to be scheduled to take the exams. Applicants should be able to take their examinations within a reasonable time after submitting proof to the Board that they have graduated.

**Recommendation #3:** *The Joint Committee and the Department recommend the implementation of photographic licensure and that the examination processes be streamlined.*

**Comments:** Due to the large number of licensee applicants and the limited amount of examinations offered, there continues to be a backlog in scheduling applicants for the licensing examination. The Board currently has a backlog of 8,000 applicants waiting to be scheduled for an examination. Licensees and applicants provided extensive testimony on this issue to both the Department and the JLSRC.

The Department has been working with the Bureau, and now the Board, to eliminate this backlog. The Department has assisted the program with both the siting of a larger exam facility in Los Angeles and streamlining the processing and scheduling of examinations by implementing computer-based testing.

The intent is to increase the number of examinations offered, reduce the backlog associated with scheduling applicants to sit for the exam, and enable barbers and cosmetologists to go to work more quickly.

Additionally, applicants who take the computer-based test will receive a photographic license. Requiring licenses to bear a photograph will assist the Board's inspectors in identifying unlicensed activity and discourage the black market transfer of licenses. This will also help to ensure that only the person who is actually licensed is practicing.

The efficiency of this computer-based testing should be reexamined by the Board to ensure that the new testing procedures actually reduce the application backlog and allow applicants to be tested more expeditiously.

**ISSUE #4: (ASSESS ACTUAL EXAMINATION COSTS?)** The Board spends more on their examination program than they make.

**Recommendation #4:** *The Joint Committee and the Department recommend that the Board should assess actual costs for licensure examinations.*

**Comments:** Currently, the Board collects approximately \$900,000 in examination fees while they annually spend approximately \$3.4 million to administer the examination program. As a result of this discrepancy, the Board is redirecting resources from other critical functions, such as enforcement, to subsidize the examination program. Consistent with many of the Department's other regulatory programs, the Board should assess applicants for the actual costs of the examination.

**ISSUE #5: (ALLOW RECIPROCITY?)** The law does not allow reciprocity for any of the Board's licensing categories.

**Recommendation #5:** *The Joint Committee and the Department recommend that reciprocity be allowed for all licensees of the Board.*

**Comments:** The Board receives between 400 and 500 applications from professionals in other states and countries annually. Because the scope of practice of manicurists, cosmetologists, barbers, and estheticians does not differ significantly from other states, professionals who are licensed in other states should be permitted to practice in California. Licensees who came to California from other states testified at the Department's hearing about the length of time they were unable to work in California while waiting to take the state examination, in spite of being licensed in another state.

The Board may wish to consider a license-by-credential statute in which professionals who hold a license in good standing in other states and have been practicing for a number of years are granted a license in California without sitting for an examination in California. Reciprocity will facilitate the ability of licensed professionals to begin working in California.

**ISSUE #6: (REVIEW 1600 HOUR TRAINING REQUIREMENT?)** During the last review the JLSRC felt that the number of hours and the curricula required in cosmetology and/or barbering school was an artificial barrier to entering the profession and no evidence existed to justify the need for such lengthy training in these areas of specialty.

**Recommendation #6:** *The Joint Committee and the Department recommend that the Board's occupational analysis should review the 1600 hour training requirement for cosmetologists. The Board should provide the information to the Department and the JLSRC upon conclusion of the occupational analysis.*

**Comments:** The Department's Office of Examination Resources (OER) is scheduled to complete an occupational analysis of the cosmetologist examination in 2003. Questions continue to be raised about the requirement that students enrolled in a cosmetology course must complete 1600 clock hours as a condition of licensure. The Department recommends that this requirement be reviewed in the upcoming occupational analysis.

Additionally, the broad application of the cosmetologist license should be reviewed. Many professionals opt to only provide hairdressing services, yet are required to complete the 1600 hours needed to receive a full cosmetologist license. Individuals seeking a professional license

in California should not be required to complete more training or testing than is necessary to perform a specific job. It is unclear why a stylist should be required to complete courses in non-hairstyling services. The upcoming occupational analysis should assess the need to restructure the license categories to more accurately reflect current practices in the profession. Such restructuring may result in an expansion of the job market for licensees who wish to provide specialized services.

The Board should report back to the JLSRC and the Department upon conclusion of the occupational analysis. At that time, further statutory clarification or revision may be indicated.

**ISSUE #7: (EVALUATE ADOPTION OF NATIONAL EXAMINATION?)** The Board creates, updates and administers their own exams (written and practical) when national exams exist.

**Recommendation #7:** *The Joint Committee and the Department recommend that the Board evaluate the equivalency of the national exam and report back to the Department and the JLSRC in conjunction with the Board's next scheduled review in 2005.*

**Comments:** The Board, working collaboratively with the OER, should evaluate the national examination administered by the National Interstate Council of State Boards of Cosmetology and consider adopting it for use in California. Adoption of the national examination would facilitate reciprocity with other states, as discussed in the Department's prior recommendation.

**ISSUE #8 (REQUIRE APPLICANTS TO SUBMIT FINGERPRINT CARDS FOR BACKGROUND INVESTIGATIONS?)** Applicants are not required to submit fingerprint cards for background investigations.

**Recommendation #8:** *The Joint Committee and the Department recommend that the Board conduct a study to assess the costs and benefits associated with requiring all applicants to submit fingerprint cards for background investigations and report back to the Department and the JLSRC in conjunction with the Board's next scheduled review in 2005.*

**Comments:** A number of boards and bureaus within the Department are required to conduct criminal background checks on their applicants. It is unclear why this Board is not.

**ISSUE #9 (ELIMINATE THE VOLUNTARILY INSTRUCTOR LICENSE?)** The law establishes a process whereby barbering instructors and cosmetology instructors can voluntarily obtain a license from the Board. If licensed as such, the instructor must complete continuing education requirements to renew the license. The necessity of a voluntary license for barbering instructors and cosmetology instructors is unclear. The necessity of requiring continuing education for instructors is unclear.



**Recommendation #9:** *The Joint Committee recommends that the voluntary license for barbering instructors and cosmetology instructors and the corresponding continuing education requirements should be eliminated.*

**Comments:** The law does not require but rather establishes a process whereby an individual can obtain a barbering or a cosmetology instructor's license. In order to renew an instructor's license an individual must complete at least 30 hours of continuing education in the teaching of vocational education.

Instead of a voluntary instructor's license that only applies to barber and cosmetology instructors, the law should establish standards for instructors that will work in conjunction with the school approval process. This will not only further the goal of ensuring instructors meet certain specified standards but will also relieve the Board from the burden of updating and administering the examinations as well as the corresponding continuing education program; thus enabling the Board to focus on other more pressing matters.

**ISSUE #10 (REVIEW APPRENTICESHIP PROGRAM?)** The reasons for the dramatic curriculum differences between apprenticeship applicants and school applicants are unclear; the curriculum requirements are 3200 hours regardless of the apprenticeship type. It is unclear whether the Board has sufficient authority and/or resources to oversee the apprenticeship program.

**Recommendation #10:** *The Joint Committee recommends that the Board, in coordination with the Department of Industrial Relations, review all components of the apprenticeship program, including but not limited to the following: (1) apprenticeship curriculum requirements; and (2) the standards for the pre-apprentice trainers, program sponsors, trainers and placement establishments. The Board should pay particular attention to ways to eliminate duplicative regulations. The Board should report their findings to the Department and the JLSRC in conjunction with their next scheduled review in 2005.*

**Comments:** There are different licensing pathways in which an individual may qualify for the examination. An individual may qualify through training in an approved school, previous licensure in California, experience and/or training in another state or country, or through the apprenticeship program.

If an individual chooses to take the apprenticeship pathway, he/she applies to the Board for an apprentice license and provides proof that he/she has completed a minimum number of pretraining hours at a facility approved by the Board. After obtaining an apprentice license, the individual trains in licensed establishments under the supervision of a licensee approved by the Board.

**ISSUE #11 (EXTEND OR ELIMINATE THE EXTERNSHIP PROGRAM?)** The externship program is only available to cosmetology students attending private schools. While the externs receive school course credit, they are unpaid. It is unclear whether the schools or the Board have sufficient authority and/or resources to oversee the externship program.

**Recommendation #11:** *The Joint Committee recommends that the Board review all components of the externship program. In addition to structural changes, the Board should address the following: (1) should the program be eliminated; (2) should the program be available to all students not just cosmetology students attending private schools; and (3) should the students be paid. The Board should report their findings to the Department and the JLSRC in conjunction with their next scheduled review in 2005.*

**Comments:** Students enrolled in a cosmetology school approved by the Bureau for Private Postsecondary and Vocational Education (BPPVE) in a course approved by the Board may, upon completion of a minimum of 60% of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology. Externs receive clock hour credit toward graduation, but that credit cannot exceed eight hours per week and cannot exceed 10% of the total clock hours required for completion of the course.

The externship is conducted in licensed cosmetology establishments that meet certain specified requirements. A school participating in the externship program shall provide the participating establishment and the extern with a syllabus. The extern, the school, and the establishment shall agree to the terms of and sign the syllabus prior to the extern beginning work at the establishment. No less than 90% of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology. The owner or manager of the establishment is required to monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees. A participating school is required to assess the extern's learning outcome from the externship program.

**ISSUE #12 (ELIMINATE SAME DAY LICENSING OR INSTITUTE SAFETY MEASURES?)** There are problems associated with same day licensing.

**Recommendation #12:** *The Joint Committee recommends that the Board assess the costs and benefits associated with same day licensing. If the Board determines that the benefits of same day licensing outweigh the costs, the Board should immediately plan and implement safety measures to protect exam site staff and undisputed licenses. The Board should report their findings and/or actions to the Department and the JLSRC in conjunction with the Board's next scheduled review in 2005.*

**Comments:** The Board is required to issue licenses to passing examination candidates the same day they are examined. The Board is the only regulatory body under the Department to issue licenses to candidates on the day of the examination. According to the Board's current report to the JLSRC, to meet this requirement, approximately 23,000 licenses a year are pre-printed and

sent weekly by courier from the Employment Development Department printing plant to the two examination sites. Of these licenses, less than 50% are issued and the remainder must be shipped back to Board headquarters, audited, voided, and destroyed, requiring additional staff time and resources. This weekly transfer and destruction of pre-printed licenses is not only costly, but also presents a significant security risk by increasing the opportunity for theft, loss and fraudulent use.

**ISSUE #13 (REVIEW VALIDITY OF AGGREGATE SCORING?) What is the value of the written exam for barbers when the low passage rate (6%) does not keep them from being licensed because of aggregate scoring?**

**Recommendation #13:** *The Joint Committee recommends that the Board work collaboratively with the OER to assess the validity of aggregate scoring for Board applicants.*

**Comments:** California provides a two-part licensing examination that consists of a written portion and a practical portion. Both parts of the examination are taken on the same day and results are issued after completion of the examination. The written portion of the examination tests the candidate's general knowledge of the Board's health and safety laws and regulations. The practical portion of the examination tests the candidate's actual minimum competency in performing the required services for that licensing category.

The required passing grade for all examinations is 75%. Except for the barber examination, all candidates must pass the written portion of the exam and the practical portion of the exam separately. Cosmetology, manicuring, esthetics and electrology candidates must achieve 300 points overall (out of a possible 400 points), including a score of 225 on the practical portion of the examination, and 70 on the written portion. In order to achieve the 300 overall points, the candidates must earn the additional five points in either portion of the examination. Barber candidates achieve a passing grade if the combined total points from the written and practical portions of the examination total 75 of 100.

For barber exams taken during FY 1999/2000, the passage rate for the practical exam was 90% and 6% for the written exam. In comparison, during this same time period, for cosmetology exams, the passage rate for the practical exam was 75% and 67% for the written exam. For barber exams taken during FY 2000/2001, the passage rate for the practical exam was 89% and 6% for the written exam. In comparison, during this same time period, for cosmetology exams, the passage rate for the practical exam was 71% and 70% for the written exam.